

R21. Administrative Services, Debt Collection.**R21-1. Transfer of Collection Responsibility of State Agencies.****R21-1-1. Purpose.**

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-3-502(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-3-502(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate plus 2% and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and allows the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.
- (2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.
- (3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.
- (4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.
- (5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.
- (6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

Pursuant to Subsection 63A-3-502(3)(b), (d), and (f) as provided by Subsection 63G-3-201, state agencies shall document and track agency receivables on the State's central accounting system (FINET) unless the state agency has received an exemption from the Division of Finance and Office of State Debt Collection. If a state agency receives such an exemption,

the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-3-502(7)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines include this rule and the statewide accounting FIACCT 06 policies available on the Division of Finance website, finance.utah.gov.

R21-1-5. Transfer of Collection Responsibility.

Each state agency with delinquent accounts shall comply with the provisions of Section 63A-3-502, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the initial billing or is delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date.

R21-1-6. Format for Transfer of Accounts Receivable Data.

(a) State agencies shall transfer delinquent accounts to the Office or its designee electronically through FINET. State agencies exempted from using FINET for individual receivables shall work with the Office to generate an electronic placement file for placing accounts.

(b) Debts owed by business entities must be transferred by State agencies with:

- (1) a list of positively identified liable parties.
- (2) Federal tax identification numbers for each liable party.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-3-502(4)(g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-3-502(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection. Two percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated up to the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collection are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the Office. Postjudgment interest as established by Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment

interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-3-502 (4)(g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment up to 5% of the payment after the payment of the costs of collection and 2% penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - 2% penalty, 3rd - the trust receivable balance up to the total amount of the receivable, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd 2% - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd 2% - penalty payment, 3rd - 5% accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be retained by the Office, until the victim is located or statute requires transfer to another State agency. Regardless, payments shall continue to be applied to the trust balance(s) until liquidated, and there after applied to State debt.

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance at finance.utah.gov.

R21-1-9. Original Signature Required on Certain Office of State Debt Collection (OSDC) Documents.

An Original Signature is Required by the Office of State Debt Collection (OSDC) on the following documents:

- (1) Victim Settlement Agreement
- (2) OSDC Debt Repayment Contract Agreement
- (3) Wage Assignments to pay debts
- (4) Authority for the automatic transfer of funds (EFT) to pay debts
- (5) Authority for the automatic Credit/Debit Card charge to pay debts

KEY: accounts receivable, collection transfer

August 7, 2019

Notice of Continuation June 7, 2017

63A-3-502(3)(m)

63A-3-502(4)(g)

63A-3-502(6)(a)

63A-3-502(6)(b)

63A-3-502(7)(f)

15-1-4

R21. Administrative Services, Debt Collection.**R21-2. Office of State Debt Collection Administrative Procedures.****R21-2-1. Purpose.**

The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

R21-2-2. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Sections 63G-4-202 and 63G-4-203 of the Utah Administrative Procedures Act.

R21-2-3. Definitions.

In addition to terms defined in Sections 63A-3-501 and 63G-4-103, the following terms are defined below as follows:

(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2)(a) "Participate" means present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(b) if a hearing is scheduled, "participate" means attend the hearing.

(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

R21-2-4. Designation of Presiding Officers.

All matters over which the office has jurisdiction and which are subject to Section 63G-4-202 will be presided over by the office director or designee.

R21-2-5. Form of Proceeding.

All adjudicative proceedings commenced by the office or commenced by other persons affected by the office's actions shall be informal adjudicative proceedings.

R21-2-6. Adjudicative Proceedings.

(1) The following actions are considered to be adjudicative proceedings:

(a) All hearings which lead to the establishment of an Order to collect delinquent accounts receivable owed to an agency of the State;

(b) All hearings which lead to the amending of an Administrative Order; and

(c) All hearings which lead to the setting aside of an Administrative Order.

R21-2-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Title 63G, Chapter 4 may be served using methods provided in Title 63G, Chapter 4 or outlined by the Utah Rules of Civil Procedures.

R21-2-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings will be as follows:

(1) The presiding officer will issue an order of default unless the entity does one of the following in response to service of a notice of office action:

(a) pays the entire delinquent account receivable in full; or

(b) participates as provided in Section R21-2-11;

(2) The presiding officer shall schedule a hearing if available under Section R21-2-9 and the entity requests it in writing within the following time periods:

(a) within 30 days of service of a notice of agency action

requesting payment in full of a delinquent accounts receivable;

(b) within 20 days of service of a notice of agency action in all other adjudicative proceedings; or

(c) before an order is issued by the presiding officer.

(3) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

(a) the decision;

(b) the reason for the decision;

(c) a notice of the right to administrative and judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting reconsideration.

(4) The presiding officer's order shall be based on the facts appearing in the office files (the record) and on the facts presented in evidence at any hearings.

(5) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R21-2-9. Availability of Hearing in Informal Adjudicative Proceedings.

(1) A hearing is permitted in an informal adjudicative proceeding if:

(a) the entity in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in Section R21-2-10; and

(b) participates in an office conference.

R21-2-10. Hearings in Informal Adjudicative Proceedings.

(1) All hearing requests shall be recorded by the office.

(2) The office shall give timely notice to the requesting party informing them that:

(a) an administrative hearing has been scheduled, including the time, date, and location of the hearing;

(b) the requesting party may bring any documentation, witnesses, and/or legal representation to the hearing;

(c) if the resulting decision is in favor of the Office, the cost of the hearing may be added to the balance owed; and

(d) the requesting party has the option to withdraw their request for a hearing in writing at least three business days prior to the hearing.

(3) Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

(a) documented information from agency sources;

(b) failure of the entity to produce upon request of the presiding officer canceled checks, or alternative documentation, as evidence of payments made; or

(c) failure of the entity to produce a record kept by a financial institution, the agency initially servicing the debt, the office or its designee, showing payments made.

R21-2-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the presiding officer unless the entity specifically requests that the hearing be conducted face to face.

R21-2-12. Procedures and Standards for Orders Resulting from Service of a Notice of Office Action.

(1) If the entity agrees with the notice of action, it may stipulate to the facts and to the amount of the debt and obligation to be paid. A stipulation and order based on that stipulation is prepared by the office for the entity's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

(2) If the entity participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue an order

based on that participation.

(3) If the entity requests a hearing and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

(4) If the entity fails to participate as follows, the presiding officer shall issue an order of default, based on whether or not:

(a) the entity fails to participate by presenting relevant information and does not request a hearing in response to the notice of office action;

(b) after proper notice the entity fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

(c) after proper notice the entity fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

(5) The default order is taken for the amount specified in the notice of action which was served on the entity plus accrued interest, penalties and applicable collection costs from the date of the action until paid in full by the entity at the interest rate specified in the default order. The entity may seek to have the default order set aside, in accordance with Section 63G-4-209.

(6) If an entity's request for a hearing is denied under Section R21-2-10, the presiding officer issues an order based upon the information in the office file.

(7) Notwithstanding any prior agreements which sets terms for the payment of the delinquent account receivable, the office reserves the right to intercept state tax refunds or other State payments to the entity to satisfy the debt represented by the delinquent account receivable.

R21-2-13. Conduct of Hearing in Informal Adjudicative Proceedings.

(1) The hearing shall be conducted by a duly qualified presiding officer. No presiding officer shall hear a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than two business days in advance of the hearing.

(2) Duties of the presiding officer:

(a) Based upon the notice of office action, objections thereto, if any, and the evidence presented at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the parties.

(b) The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of office action to conform to the evidence.

(3) Rules of Evidence:

(a) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(b) Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

(c) Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

(d) All relevant evidence shall be admitted.

(e) Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

(f) All parties shall have access to information contained in the office's files and to all materials and information gathered in the hearing, to the extent permitted by law.

(g) Intervention is prohibited.

(4) Rights of the parties: A party appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the party's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before the presiding officer by a representative of the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General.

R21-2-14. Order Review.

Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in the Sections 63G-4-302 and 63G-4-401.

R21-2-15. Reconsideration.

Either the entity or the office may request reconsideration in accordance with Section 63G-4-302 once during an informal adjudicative proceeding.

R21-2-16. Setting Aside Administrative Orders.

(1) The office may set aside an administrative order for any of the following reasons:

(a) a rule or policy was not followed when the order was taken;

(b) the entity was not properly served with a notice of office action;

(c) the entity was not given due process; or

(d) the order has been replaced by a judicial order which covers the same time period.

(2) The office shall notify the entity of its intent to set the order aside by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of office action, the presiding officer determines that the order shall be set aside, the office shall notify the entity.

R21-2-17. Amending Administrative Orders.

(1) The office may amend an order for either of the following reasons:

(a) a clerical mistake was made in the preparation of the order; or

(b) the time periods covered in the order overlap the time periods in another order for the same participants.

(2) The office shall notify the entity of its intent to amend the order by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the entity.

KEY: accounts receivable, adjudicative process

August 7, 2019

Notice of Continuation March 17, 2017

63G-4-202

63G-4-203

R21. Administrative Services, Debt Collection.**R21-3. Debt Collection Through Administrative Offset.****R21-3-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-3-310, and Subsection 63A-3-504(2)(f), which authorize the Division of Finance to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

- (a) name of entity;
- (b) social security number or federal employer's identification number of the entity;
- (c) amount of delinquent account receivable; and
- (2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the State's Accounting System (FINET).

R21-3-7. Notification to Debtors.

All notifications required in 63A-3-303 must be sent within two business days of the date listed on the notice.

R21-3-8. Notification and Response.

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

- (2)(a) The agency shall verify the delinquent account balance; and
- (b) notify the division of the amount to be offset.
- (3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.
- (4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-9. Treatment of Injured Spouse Forms.

- (1) Subject to Subsection R21-3-9(2), upon receipt of an

injured spouse claim from the spouse of a debtor, a garnisher shall:

- (a) Review the claim for validity;
- (b) Determine the frequency of claims made; and,
- (c) Release the offset of matched funds proportionate to the income of the injured spouse using the following formula: (income of injured spouse/total household gross income) x levied amount.
- (2) Recognizing that garnishers are not statutorily required to honor injured spouse claims:
 - (a) Agencies garnishing taxes under this section must honor at least a first-time injured spouse claim that is determined to be valid.
 - (b) Subsequent claims may be denied at the discretion of the garnisher.
 - (3) Valid injured spouse claims should require at a minimum:
 - (a) Federal tax returns
 - (b) IRS Form 8379
 - (c) Income documents, including all Form W-2s and Form 1099s.
 - (d) State tax returns.

R21-3-10. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

- (a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the administrative offset; plus
- (b) the amount identified in Subsection R21-3-8(3) to satisfy the delinquent account receivable.

R21-3-11. Release of Offset Funds by the Division.

- (1) The division shall retain the administrative charge.
- (2) The division shall release the offset funds to the agency.
- (3) The division shall release the balance of any available funds from the match to the entity.

R21-3-12. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-13. Administrative Fee.

Pursuant to Section 63A-3-502(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable, administrative offset

August 7, 2019

63A-3-310

Notice of Continuation March 17, 2017

63A-3-504(2)(f)

R65. Agriculture and Food, Marketing and Development.**R65-1. Utah Apple Marketing Order.****R65-1-1. Authority.**

Promulgated under authority of Subsection 4-2-103(1)(e).

R65-1-2. Definitions of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Apples" means apples produced for market.

D. "Producer" means any person in this State in the business of producing or causing to be produced apples for the commercial market, provided such producers shall not include producers who sell all the commodity direct to the consumer.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing in commerce, or affecting commerce, apples which are produced in Utah; but no rule under this Order shall apply to the sale of such apples to Retail Outlets.

F. "Registered" producers means a producer who has indicated that he/she wants to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

G. "Known" producers means a producer of a specific commodity who has been identified by the commodity group, her/himself, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

R65-1-3. Board.

A. A Board of Control is hereby established consisting of seven members, two of whom shall be handlers to carry out the provisions of this order.

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Two grower members and one handler shall be appointed for a period of two years - the first appointment only. Three grower members and one handler member shall be appointed for a period of four years. All appointments after the first year shall be for a period of four years.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry.

D. No member of such Board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

E. The duties of the Board shall be administrative only and may include only the acts mentioned in this order.

F. A majority of the Board of Control must attend a meeting to conduct business. All decisions of the Board of Control shall be by majority vote.

G. The officers of the Board shall be selected from the seven Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled by the Commissioner from a list of names submitted by the industry.

H. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-1-4. Provisions of the Order.

A. This order provides for:

1. Advertising and sales promotion to create and expand the market of Utah Apples. This shall be done without reference to brand or trade names.

2. Research projects and experiments for the purpose of improving the quality, size, health and general conditions of the apples grown in the State of Utah and for the purpose of protecting the health of the citizens of the State.

3. Uniform grading of apples sold or offered for sale by producers or handlers. Such grading standards shall not be established below any minimum standards now prescribed by law for this State.

4. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order which is to strengthen the apple businesses in the state.

B. Expenses - Assessments - Collection and Disbursement

1. Each producer or handler subject to this order shall pay to the Board of Control such producer's or handler's pro rata share of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. Each producer shall pay up to 5 cents per 40 lb. box to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler or producer, subject to this Order, for the collection of such handler's or producer's pro rata share of expenses.

2. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

3. The Board of Control is required to reimburse the Commissioner for funds which are expended by the Commissioner in performing his duties, as provided in this Order, such reimbursement to include only funds actually expended in connection with this Order.

4. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to paragraph 5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

R65-1-5. Division of Funds.

Assessments made and monies collected under provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-1-6. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the State.

R65-1-7. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request by

December 31 for apples harvested in that harvest year.

R65-1-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every five years by the industry, Subsection 4-2-2(3)(a). Once a year, a referendum vote may be called at the request of the producers through a petition of ten percent of the producers.

KEY: promotions

1987

4-2-103(1)(e)

Notice of Continuation August 30, 2019

R68. Agriculture and Food, Plant Industry.**R68-27. Cannabis Cultivation.****R68-27-1. Authority and Purpose.**

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis cultivation license.

R68-27-2. Definitions.

As used in this rule:

1) "Applicant" means any person or business entity who applies for a cannabis cultivation facility license.

2a) "Cannabis" means any part of a marijuana plant:

b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.

3) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

5) "Department" means the Utah Department of Agriculture and Food

6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

7) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

1) A cannabis cultivation license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.

2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.

3) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

4) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.

5) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

6) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses that will be issued.

7) The license shall expire on December 31st.

8) A license may not be sold or transferred.

R68-27-4. Cannabis Cultivation Facility Requirements.

1) A cannabis cultivation facility operating plan shall contain a blue print or diagrams of the facility containing the following

information:

a) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be propagated;

b) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be grown;

c) the square footage of the areas where cannabis is to be harvested;

d) the areas where cannabis is to be dried, trimmed and cured;

e) the square footage of the areas where cannabis is to be packaged for wholesale;

f) the total square footage of the cultivation facility;

g) the square footage and location of areas to be used as storerooms;

h) the location of the toilet facilities and hand washing facilities;

i) the location of a break room and location of personal belonging lockers; and

j) the location of the areas to be used for loading and unloading of cannabis products for transportation.

2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:

a) the area where cannabis is to be propagated; and

b) the area where cannabis is to be grown.

3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.

4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.

5) A cannabis cultivation facility shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergencies at the facility

6) A cannabis cultivation facility operating plan shall include:

a) a pest management plan;

b) when and how fertilizers are to be applied during the production process;

c) water usage and waste water disposal; and

d) a waste disposal plan.

7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.

8) A cannabis cultivation facility shall use a standardized scale which is registered with the department when cannabis is:

a) packaged for sale by weight;

b) bought and sold by weight;

c) weighed for entry into the inventory control system.

9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises including proper and timely removal of all litter and waste.

10) The cannabis cultivation facility shall compartmentalize all areas in the facility based on function.

11) A cannabis cultivation facility shall limit access to the compartments to appropriate agents.

R68-27-5. Security Requirements.

1) At a minimum, each cannabis cultivation facility shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed cannabis cultivation facility shall have a complete video surveillance system:

a) with a minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and

b) that retains footage for at least 45 days.

3) All cameras at a cannabis cultivation facility shall:

a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and

- b) record continuously.
- 4) Controlled areas include:
 - a) all entrances and exits, or ingress and egress vantage points;
 - b) all areas within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, or trimmed;
 - c) all areas where cannabis is stored; or
 - d) all areas where cannabis waste is being moved, processed, stored, or destroyed.
- 5) If a cannabis cultivation facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.
- 6) If a cannabis cultivation facility stores footage on a remote server, access shall be restricted to protect from employee tampering.
- 7) Any gate or entry point must be lighted in low-light conditions.
- 8) All visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.
- 9) All cannabis cultivation facility visitors shall be escorted by a facility agent at all times while in the facility.
- 10) A cannabis cultivation facility shall keep and maintain a log showing:
 - a) the full name of each visitor entering the facility;
 - b) the badge number issued;
 - c) the time of arrival;
 - d) the time of departure, and
 - e) the purpose of the visit.
- 11) The visitor log shall be maintained by the cannabis cultivation facility for a minimum of one year.
- 12) The cannabis cultivation facility shall make visitor log available to the department upon request.

R68-27-6. Inventory Control.

- 1) Every cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through all phases of production.
- 2) Every cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.
- 3) Unique identification numbers cannot be reused.
- 4) Each cannabis plant, lots of usable cannabis trim, leaves, and other plant matter cannabis products, test lots, harvest lots, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.
- 5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris.
- 6) The following shall be reconciled in the inventory control system at the close of business each day:
 - a) movement of seedling or clone to the vegetation production area;
 - b) when plants are partially or fully harvested or destroyed;
 - c) when cannabis is being transported to other facilities;
 - d) all samples used for testing and the testing results;
 - e) a complete inventory of all cannabis, cannabis seeds, plant tissue, seedlings, clones, plants, trim or other plant material;
 - f) the weight of all harvested cannabis plants immediately after harvest;
 - g) the weight and disposal of post-harvest waste materials;
 - h) the identity of who disposed of the waste and the location of waste receptacle; and
 - i) theft or loss, or suspected theft or loss, of cannabis.
- 7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.
- 8) For plants under eight inches, the cultivation facility shall

keep record of:

- a) the number of cannabis seeds or cuttings planted;
- b) the date on which they were planted;
- c) the date the plants were moved into the vegetation area and tagged;
- d) the strain of the seeds or cuttings;
- e) the number of plants grown to maturity;
- f) the number of plants disposed of; and
- g) the date of disposal.

R68-27-7. Cannabis Cultivation Facility Agents.

- 1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent registration card on a form provided by the department.
- 2) An application is not considered complete until the background check has been completed and the facility has paid the fee.
- 3) The cannabis production establishment agent registration card shall contain:
 - a) the agent's full name;
 - b) the name of the cannabis cultivation establishment;
 - c) the type of cannabis production establishment;
 - d) the job title or position of the agent; and
 - e) a photograph of the agent.
- 4) A cannabis cultivation facility is responsible to ensure that all agents have received the department approved training as specified in Utah Code 4-41a-301.
- 5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.
- 6) All cannabis facility agents shall have their state issued identification in their possession to certify the information on their badge is correct.
- 7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis cultivation facility.

R68-27-8. Pesticide and Fertilizer Use.

- 1) A cannabis cultivation facility shall maintain:
 - a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis which shall be accessible to all agents;
 - b) the original label or a copy thereof for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis; and
 - c) a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis.
- 2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.
- 3) Pesticides, fertilizers, and other agricultural chemicals are to be stored in a separate location apart from cannabis.
- 4) Pesticides shall be used consistent with the label requirements.
- 5) Commercial fertilizers registered with the department under the Utah Fertilizer Act may be used in the production and handling of cannabis
- 6) Cannabis exposed to unauthorized pesticides, soil amendments, or fertilizers is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-9. Transportation.

- 1) A printed transport manifest shall accompany every transport of cannabis.
- 2) The manifest shall contain the following information:
 - a) the cannabis production establishment address and license number of the departure location;
 - b) physical address and license number of the receiving location;

- c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
 - d) date and time of departure;
 - e) estimated date and time of arrival; and
 - f) name and signature of each agent accompanying the cannabis.
- 3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.
 - 4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.
 - 5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.
 - 6) The receiving cannabis establishment shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
 - 7) During transport a cannabis cultivation facility shall ensure the cannabis is:
 - a) shielded from the public view;
 - b) secured; and
 - c) temperature controlled if perishable.
 - 8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
 - 9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-10. Recall Protocol.

- 1) The department may initiate a recall of cannabis or cannabis products if:
 - a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;
 - b) evidence exists that residual solvents are present on or in cannabis or cannabis products;
 - c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or
 - d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.
- 2) A cannabis cultivation facility's recall plan shall include, at a minimum:
 - a) designation of at least one member of the staff who serves as the recall coordinator;
 - b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
 - c) procedures to retrieve and destroy product; and
 - d) a communications plan to notify those affected by the recall.
- 3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.
- 4) The cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.
- 5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.
- 6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-27-11. Minimum Requirements for the Storage and Handling of Cannabis.

- 1) All storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.
- 2) All stored cannabis shall be at least six inches off the ground.
- 3) All cannabis shall be stored away from all other chemicals,

- lubricants, pesticides, fertilizers, or other potential contaminants.
- 4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

R68-27-12. Cannabis Waste Disposal.

- 1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.
- 2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.
- 3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- 4) All cannabis waste shall be rendered unusable prior to leaving the cannabis cultivation facility.
- 5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.
- 6) Materials used to grind with cannabis fall into two categories:
 - a) compostable; or
 - b) non-compostable.
- 7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:
 - a) food waste;
 - b) yard waste; or
 - c) vegetable-based grease or oils.
- 8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
 - a) paper waste;
 - b) cardboard waste;
 - c) plastic waste; or
 - d) soil.
- 9) Cannabis waste includes:
 - a) cannabis plant waste including roots, stalks, leaves, and stems;
 - b) excess cannabis or cannabis products from any quality assurance testing;
 - c) cannabis or cannabis products that fail to meet testing requirements; and
 - d) cannabis or cannabis products subject to a recall.

R68-27-13. Change in Operation Plans.

- 1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, prior to making any changes to:
 - a) ownership or financial backing of the facility;
 - b) the facility's name;
 - c) a change in location;
 - d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
 - e) change in square footage or acreage of cannabis intended to be cultivated.
- 2) A cultivation facility may not implement changes to the approved operation plan without department approval.
- 3) The department shall respond to the request for changes within 15 business days.
- 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- 5) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-27-14. Renewals.

- 1) A cannabis cultivation facility shall submit a notice of

intent to renew and the licensing fee to the department by December 1st.

2) If the licensing fee and intent to renew are not submitted by December 31st the licensee may not continue to operate.

3) The department renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-27-15. Violations Categories.

1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:

- a) use of unapproved pesticides or unapproved agricultural soil amendments;
- b) cannabis sold to an unlicensed source;
- c) cannabis purchased from an unlicensed source;
- d) refusal to allow inspection;
- e) failure to comply with testing requirements;
- f) a test result for high pesticide residue in the cannabis produced or cannabis product ;
- g) unauthorized personnel on the premises;
- h) permitting criminal conduct on the premises; or
- i) engaging in or permitting a violation of the Utah Code 4-41a.

2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:

- a) failure to maintain alarm and security systems;
- b) failure to keep and maintain records;
- c) failure to maintain traceability;
- d) failure to follow transportation requirements;
- e) failure to follow the waste and disposal requirements;
- f) engaging in or permitting a violation of Utah Code 4-41a or this rule; or
- g) failure to maintain standardized scales.

3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:

- a) an unauthorized change to the operating plan;
- b) failure to notify the department of changes to the operating plan;
- c) failure to notify the department of changes to financial or voting interests of greater than 2%;
- d) failure to follow the operating plan as approved by the department;
- e) engaging in or permitting a violation of this rule or Utah Code 4-41a; or
- f) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

**KEY: marijuana, cannabis cultivation facility
August 29, 2019**

4-41a-404(3)
4-41a-103(5)
4-41a-302(3)(b)(ii)
4-41a-701(2)
4-41a-405(2)(b)(iv)
4-2-103(1)(i)
4-41a-801(1)

R68. Agriculture and Food, Plant Industry.

R68-29. Quality Assurance Testing on Cannabis.

R68-29-1. Authority and Purpose.

1) Pursuant to sections 4-41-403(1) and 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product testing and sets limits for pesticides, residual solvents, heavy metals, and other contaminants.

R68-29-2. Definitions.

1) "Analyte" means a substance or chemical component that is undergoing analysis.

2) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

3) "Cannabinoid product" means a chemical compound extracted from a hemp product that:

a) is processed into a medical dosage form; and

b) contains less than 0.3% tetrahydrocannabinol by dry weight.

4) "Cannabis" means any part of the marijuana plant.

5) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

6) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis extract; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

7) "Cannabis product" means a product that:

a) is intended for human use; and

b) contains cannabis or tetrahydrocannabinol.

8) "Department" means the Utah Department of Agriculture and Food.

9) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

10) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

11) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading

agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid the pesticide's application or effect.

R68-29-3. Required Cannabis and Cannabis Product Tests.

1) Prior to the transfer of cannabis, a cannabis cultivation facility shall have an independent cannabis laboratory test a representative sample of a cannabis lot for microbiological contaminants, heavy metals, and pesticide residue.

2) Prior to offering cannabis or a cannabis product for sale, a cannabis processing facility shall have an independent cannabis laboratory test a representative sample of a batch or lot for microbiological contaminants, heavy metals, pesticide, and residual solvent.

3) A cannabinoid product shall be tested by an independent testing laboratory for microbiological contaminants, heavy metals, pesticides, and residual solvents prior to the products being registered with the department in accordance with Utah Code 4-41-402

4) The department may require an independent laboratory to test for toxins.

5) If the sample of cannabis does not pass the toxin, heavy metal, pesticide, or solvent test based on the standards set forth in this rule, the cannabis cultivation facility or shall dispose of the entire batch or lot from which the sample was taken.

6) If the sample of cannabis does not pass the microbiological test based on the standards set forth in this rule, the cannabis may be used to make a carbon dioxide (CO₂) or solvent-based extract.

7) If the sample of a cannabis product does not pass the microbiological, toxin, heavy metal, pesticide, or residual solvent test based on the standards set forth in this rule, the cannabis processing facility shall dispose of the entire batch or lot from which the sample was taken.

R68-29-4. Microbiological Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Section 1111 of the United States Pharmacopeia.

2) The Department adopts by reference Section 1111 of the United States Pharmacopeia (May 1,2012).

R68-29-5. Standards for Pesticides.

1) Only pesticides allowed by the department may be used in the production of cannabis, cannabis products, or cannabinoid products.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under R68-29-5(1) and is above the action levels provided in R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis or cannabis product fail quality assurance testing for pesticides if the results exceed the limits as set forth on the table below.

Table 1
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2

Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazon	78587-05-0	1
Imazal	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

R68-29-6. Solvents Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in the table below.

Table 2
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS) Registry number	Action level µg/g
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
2-Butanol	78-93-3	5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000

Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

2) Xylenes is a combination of the following:

- a) 1,2-dimethylbenzene;
- b) 1,3-dimethylbenzene;
- c) 1,4-dimethylbenzene; and
- d) ethyl benzene.

R68-29-7. Heavy Metals.

A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Table 3
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

R68-29-8. Mycotoxin.

A sample and related lot or batch of cannabis or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in the table below.

Table 4
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 µG/kg of substance
Ochratoxin A.	<20 µG/kg of substance

KEY: cannabis testing, quality assurance, cannabis laboratory August 29, 2019

**4-41a-701(3)
4-41-403(1)**

R68. Agriculture and Food, Plant Industry.**R68-30. Independent Cannabis Testing Laboratory.****R68-30-1. Authority and Purpose.**

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain an independent cannabis testing laboratory license.

R68-30-2. Definitions.

1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

2) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

3) "Cannabis" means any part of a marijuana plant.

4) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

5) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

6) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

7) "Department" means the Utah Department of Agriculture and Food.

8) "Independent cannabis testing laboratory" means a person who:

a) conducts a chemical or other analysis of cannabis or a cannabis product; or

b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.

9) "Independent cannabis testing laboratory agent" means an individual who:

a) is an employee of an independent cannabis testing laboratory; and

b) holds a valid cannabis production establishment agent registration card.

10) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

R68-30-3. Independent Testing Laboratory License.

1) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility to conduct testing as required by section 4-41a-701(2) and Utah Admin. Code R68-29.

2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing facility to conduct testing as required by section 4-41a-701(2) and Utah Admin. Code R68-29.

3) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility and a cannabis processing facility to conduct the additional test as requested.

4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

5) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.

6) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

7) The department may conduct face-to-face interviews with an applicant if needed to determine the best-qualified applicant for the number of licenses needed.

8) The license shall expire on December 31st of each year.

9) An application for renewals shall be submitted to the department by December 1st of each year.

10) If the renewal application is not submitted by December 31st the licensee may not continue to operate.

11) A license may not be sold or transferred.

R68-30-4. Independent Cannabis Testing Laboratory Requirements.

1) An independent testing laboratory shall employ a scientific director responsible for:

a) ensuring that the laboratory achievement and maintenance of quality standards of practice; and

b) supervising laboratory staff.

2) The scientific director for an independent laboratory shall have:

a) a doctorate in chemical or biological sciences from an accredited college or university and have at least 2 years of post-degree laboratory experience;

b) a master's degree in chemical or biological sciences from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

c) a bachelor's degree in chemical or biological sciences from an accredited college or university and have a least 6 years of post-degree laboratory experience.

3) An independent cannabis testing laboratory shall follow validated analytical methods, such as those published by AOAC, American Herbal Pharmacopoeia, EPA, FDA, or other reputable scientific organizations or notify the department of alternative scientifically valid testing methodology the lab is following for each required test.

4) An independent cannabis testing laboratory may not use an alternative testing method without prior review from the department.

5) The department shall review any monograph or analytical method followed by an independent cannabis testing laboratory to ensure the methodology produces scientifically accurate results prior to the use of alternative testing methods to conduct the required tests.

6) An independent cannabis testing laboratory shall establish written standard operating procedures for each test being conducted.

7) An independent cannabis testing laboratory shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation.

8) An independent cannabis testing laboratory may be licensed

prior to ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:

a) adopt and follow minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and development; and

b) becomes ISO 17025:2017 accredited within 18 months.

9) The department incorporates the following materials by reference:

a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control (2014 Revisions) published by the American Herbal Pharmacopoeia; and

b) OECD Principles of Good Laboratory Practice and Compliance Monitoring (1997) published by the Organization for Economic Co-operation and Development.

10) An independent cannabis testing laboratory shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergencies at the laboratory.

11) An independent cannabis testing laboratory shall compartmentalize all areas in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.

R68-30-5. Security Requirements.

1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed independent cannabis testing laboratory shall have complete video surveillance system:

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days;

3) All cameras shall:

a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and

b) record continuously.

4) Controlled areas included:

a) all entrances and exits;

b) all areas where cannabis or cannabis products are stored,

c) all areas where cannabis or cannabis products are being tested, and

d) all areas where cannabis waste is being moved, processed, stored or destroyed.

5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

6) If an independent cannabis testing laboratory stores footage on a remote server, access shall be restricted to protect from employee tampering.

7) Any entry point must be lighted in low-light conditions sufficient to record activity occurring.

8) All visitors to an independent cannabis testing laboratory shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

9) All visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.

10) An independent cannabis testing laboratory shall keep and maintain a visitor's log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

11) The independent cannabis testing laboratory shall keep the visitors log for a minimum of a year.

12) The independent cannabis testing laboratory shall make the visitor log available to the department upon request.

R68-30-6. Inventory Control.

1) Each test sample shall have a unique identification number in the inventory control system.

2) Each test sample shall be traceable to the lot or batch used as the base material from the cannabis production establishment.

3) Unique identification numbers may not be reused.

4) Each test sample that has been issued a unique identification number shall have a physical tag placed on it with:

a) the unique identification number;

b) the license number and name of the lab receiving the test sample;

c) the license number and name of the cannabis production establishment name;

d) the date the test sample was collected; and

e) the weight of the sample.

5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) the date and time the test sample was received;

b) all samples used for testing and the test results;

c) the identity of the agent conducting the test;

d) a complete inventory of cannabis test samples;

e) the weight and disposal of cannabis waste materials;

f) the identity of who disposed of the cannabis waste; and

g) the theft or loss or suspected theft or loss of test sample.

7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.

R68-30-7. Independent Cannabis Testing Laboratory Agents.

1) An independent cannabis testing laboratory shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the independent cannabis testing laboratory has paid the registration fee.

3) The cannabis establishment agent registration card shall contain:

a) the agent's full name;

b) the name of the cannabis processing establishment; and

c) a photograph of the agent.

4) An independent cannabis testing laboratory is responsible to ensure that all agents have received:

a) the department approved training as specified in Utah Code 4-41a-301; and

b) any task-specific training as outlined in the operating plan submitted to the department.

5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis production establishment agents shall have their state-issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the independent cannabis testing laboratory.

R68-30-8. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

- b) physical address and license number of the receiving location;
 - c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
 - d) date and time of departure;
 - e) estimated date and time of arrival; and
 - f) name and signature of each agent accompanying the cannabis.
- 3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.
- 4) A copy of the transport manifest shall be given to the independent laboratory.
- 5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.
- 6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- 7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:
- a) shielded from the public view;
 - b) secured; and
 - c) temperature controlled if perishable.
- 8) An independent cannabis testing laboratory shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- 9) Only the registered agents of the independent cannabis testing laboratory may occupy a transporting vehicle.

R68-30-9. Cannabis Waste Disposal.

- 1) Solid and liquid wastes generated during cannabis testing shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.
- 2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state laws and regulations.
- 3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- 4) All cannabis waste shall be rendered unusable prior to leaving the independent cannabis testing laboratory.
- 5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.
- 6) Materials used to grind and incorporate with cannabis fall into two categories:
- a) compostable; or
 - b) non-compostable.
- 7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:
- a) food waste;
 - b) yard waste; or
 - c) vegetable-based grease or oils.
- 8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
- a) paper waste;
 - b) cardboard waste;
 - c) plastic waste; or
 - d) soil.
- 9) Cannabis waste includes:
- a) cannabis plant waste including roots, stalks, leaves, and stems;
 - b) excess cannabis or cannabis products from any quality assurance testing;
 - c) cannabis or cannabis products that fail to meet testing

- requirements; and
- d) cannabis or cannabis products subject to a recall.

R68-28-10. Change in Operation Plans.

- 1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, prior to making any changes to:
- a) ownership or financial backing of the facility;
 - b) the facility's name;
 - c) a change in location;
 - d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or
 - e) change in written operating procedures.
- 2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.
- 3) The department shall respond to the request for changes within 15 business days.
- 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- 5) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-30-11. Renewals.

- 1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by December 31st of each year.
- 2) If the licensing fee and intent to renew are not submitted on or before December 31st the licensee may not continue to operate.
- 3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-30-12. Proficiency Testing.

- 1) The department shall establish a proficiency testing program for independent cannabis testing laboratories.
- 2) Each independent cannabis testing laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the Department.

R68-30-13. Violation Categories.

- 1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:
- a) cannabis sold to an unlicensed source;
 - b) cannabis purchased from an unlicensed source;
 - c) refusal to allow inspection;
 - d) refusal to participate in proficiency testing;
 - e) failure to comply with testing requirements;
 - f) failure to report testing results;
 - g) unauthorized personnel on the premises;
 - h) permitting criminal conduct on the premises;
 - i) engaging in or permitting a violation of the Utah Code 4-41a which amounts to a public safety violation as described in this subsection.
- 2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:
- a) failure to maintain alarm and security systems;
 - b) failure to keep and maintain records;
 - c) failure to maintain traceability;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements; or
 - f) engaging in or permitting a violation of Utah Code 4-41a or this rule which amounts to a regulatory violation as described in this subsection.
- 3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements

including, but not limited to:

- a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
 - d) failure to follow the operating plan as approved by the department;
 - e) engaging in or permitting a violation of this rule or Utah Code 4-41a which amounts to a licensing violation as described in this subsection; or
 - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

KEY: cannabis laboratory, cannabis testing
August 29, 2019

4-41a-701(3)
4-41a-404(3)
4-41a-405(2)(b)(iv)
4-41a-103(5)

R70. Agriculture and Food, Regulatory Services.**R70-310. Grade A Pasteurized Milk.****R70-310-1. Authority.**

A. Promulgated Under the Authority of Subsection 4-2-103(1)(i).

B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

"The Grade A Pasteurized Milk Ordinance, 2017 Recommendations of the United States Public Health Service/Food and Drug Administration", the 2017 Revision of "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments," and the 2017 Revision of "Methods of Making Sanitation Ratings of Milk Shippers," are hereby adopted and incorporated by reference within this rule. These documents are available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(LL) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance 2011 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: dairy inspections

August 13, 2019

Notice of Continuation June 7, 2019

4-2-2

R70. Agriculture and Food, Regulatory Services.**R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices.****R70-910-1. Authority.**

Promulgated under Section 4-9-2.

R70-910-2. Policy.

(1) It shall be the policy of the Division of Regulatory Services, Weights and Measures Program, of the Utah Department of Agriculture and Food to accept registration of an individual who:

(a) Provides acceptable evidence of all business licenses required by the applicable cities, counties or states to conduct business, if self-employed, or his employer's if not self-employed; provides acceptable evidence as demonstrated by attending Department of Agriculture and Food provided training and successfully passing an exam administered by the department, that she is fully qualified to install, service, repair, or recondition a commercial weighing or measuring device and has a thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations; and

(b) has possession of, or has accessible for his use, weights and measures standards and testing equipment certified by the Department of Agriculture and Food to be appropriate in design and capacity.

(2) It shall be unlawful for any individual to place into public or commercial service any weighing or measuring device prior to being tested and sealed by a registered serviceperson.

R70-910-3. Definitions.

(1) "Registered Serviceperson" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device, and who is registered by the Department of Agriculture and Food to perform these services.

(2) "Service Agency" means any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device.

(3) "Commercial Weighing and Measuring Device" means any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

(4) "Security Seal" means a uniquely identifiable physical seal, such as a lead-and-wire seal or other type of locking seal, or similar apparatus attached to a weighing or measuring device for protection against or indication of access to adjustment.

(5) "Placed in service report" means a report, completed on a department form for declaring that a commercial weighing or measuring device has been put into service.

R70-910-4. Reciprocity.

The Department of Agriculture and Food may enter into a reciprocal agreement with any other State or States that have similar registration policies. Under such agreement, the registered servicepersons of the States party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all states party to such agreement.

R70-910-5. Registration Fee.

Upon application for and renewal of registration, the applicant

shall pay to the Department of Agriculture and Food a registration fee determined by the department pursuant to subsection 4-2-2(2) for a registered serviceperson. Registration shall expire December 31 of each year, and shall be renewed annually.

R70-910-6. Registration.

(1) An individual may apply for registration to place into service commercial weighing or measuring devices on the Department of Agriculture and Food's application form. An applicant also shall submit appropriate evidence of having passed a department approved exam that measures the applicant's knowledge of device installation, service, repair and maintenance and applicable laws, orders, rules and regulations.

(2) The department shall provide a device service training class and administer a proficiency examination. The proficiency examination will test the basic knowledge required for competency as a serviceperson. The passing score on the examination shall be above 80%.

(3) An examinee who fails the device service proficiency examination shall retake the training class in order to retake the examination.

(4) The department may revise the examination to address knowledge of changes in the law or technology.

(5) Training class attendance and successful completion of the examination may be used to apply for a Certificate of Registration for three successive registration cycles.

(6) Servicepersons who are employed by a service agency that provides training shall notify the department and shall have up to 30 days to become registered.

(a) Beginning January 1, 2009, the department shall provide a class and examination opportunity for new servicepersons within two weeks of notification.

R70-910-7. Certificate of Registration.

Upon receipt and acceptance of a properly executed application form, the Department of Agriculture and Food shall issue to the applicant a "Certificate of Registration," including an assigned registration number, which shall remain effective until returned by the applicant, withdrawn by the Department of Agriculture and Food, or registration expires.

R70-910-8. Privileges of a Registrant.

The bearer of a Certificate of Registration shall have the authority to:

(1) Remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Department of Agriculture and Food; and

(2) Place in service, until such time as an official examination can be made, a commercial weighing or measuring device that has been newly installed, routinely calibrated or officially rejected.

R70-910-9. Place in Service Report.

The Department of Agriculture and Food shall make available to each registered serviceperson the official Placed in Service Report form. A placed in service report shall be submitted within 24 hours to the department by the serviceperson for each rejected device restored to service and for each newly installed device placed in service. All official rejection tags or marks removed from the device shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake City, UT 84114-6500. A duplicate copy of the report shall be retained by the owner or operator of the device, and a duplicate copy of the report shall be retained by the registered serviceperson or her employer.

R70-910-10. Standards and Testing Equipment.

(1) A registered serviceperson shall submit, at least biennially to the Department of Agriculture and Food, for examination and

certification, any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device.

(2) A registered serviceperson may not use, in officially servicing commercial weighing or measuring devices, any standards or testing equipment that have not been certified by the Department of Agriculture and Food.

R70-910-11. Security Seals Required to be Submitted.

(1) A registered serviceperson shall submit to the department the seal that she will use.

(A) If the seal belongs to the registered serviceperson's employer, the serviceperson shall identify the employer.

(2) When a registered serviceperson changes his seal, he shall submit the seal and employer's identification to the department prior to it being used.

(3) A registered serviceperson who uses their own seal shall submit that seal to the department.

(4) When a registered serviceperson changes their own seal, he or she shall submit the seal to the department prior to it being used.

R70-910-12. Qualification to Service Heavy Capacity Scales.

No registered serviceperson shall be qualified to place in service or remove a rejection tag from a heavy capacity scale unless he has adequate testing weights certified by the Utah Department of Agriculture and Food, Division of Regulatory Services, Weights and Measures Program. Adequate testing weights shall be deemed to be 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.

R70-910-13. Unlawful Acts Specified.

(1) It shall be unlawful for any non-registered individual to:

(a) place into public or commercial service a weighing or measuring device; or

(b) to represent themselves as being registered as a serviceperson by the department.

R70-910-14. Suspension or Revocation of Certificate of Registration.

The Department of Agriculture and Food may, for good cause, after careful investigation, consideration, and due notice and process which shall include an opportunity for a hearing, suspend or revoke a Certificate of Registration, Section 4-1-5 and Section 63G-4.

R70-910-15. Publication of Lists of Service Agencies and Registered Servicepersons.

The Department of Agriculture and Food shall publish, and may supply upon request, lists of registered servicepersons and those service agencies which commit to using registered servicepersons to calibrate commercial weighing and measuring devices or place them in service. The department may remove from the lists a service agency found to have used a non-registered service person to calibrate or place into service a commercial weighing or measuring device.

R70-910-16. Notification of Service Agency.

Whenever the voluntary registration of a service person is suspended or revoked, the department shall notify the known employing service agency within three working days.

R70-910-17. Notification of Changed Equipment.

Whenever a voluntarily registered serviceperson changes any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device, the serviceperson shall notify and provide proof to the department that the testing equipment or standard has been approved by an official state metrologist.

**KEY: inspections, weights and measures
December 8, 2008
Notice of Continuation August 30, 2019**

4-9-2

**R70. Agriculture and Food, Regulatory Services.
R70-960. Weights and Measures Fee Registration.
R70-960-1. Authority.**

Promulgated under authority of 4-9-118.

R70-960-2. Definitions of Terms.

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E.P.C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

R70-960-3. Application.

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

R70-960-4. Device Registration.

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

R70-960-5. Device.

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

R70-960-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

R70-960-7. Registration Certificate Displayed.

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices or produce the certification for review upon request.

R70-960-8. Registration.

A. Registration fees are established according with Section 4-9-118. When the appropriate fee is not paid on or before January 1, the registration shall become delinquent and a penalty fee shall be

added as per Section 4-1-107. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

KEY: inspections

November 2, 2004

Notice of Continuation August 30, 2019

4-9-15

R156. Commerce, Occupational and Professional Licensing.**R156-31b. Nurse Practice Act Rule.****R156-31b-101. Title.**

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

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.

(10) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(11) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(12) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(10) and (16).

(13) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(14) "Delegator" means a licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed person the authority to perform a task on behalf of the delegator in accordance with Subsection 58-31b-102(15)(g), Subsection R156-31b-102(12), and Section R156-31b-701.

(15)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(16) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(17) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(18) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(19) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(20) "LPN" means licensed practical nurse.

(21) "MAC" means medication aide certified.

(22) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(23) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(24) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(25) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered

nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(26) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

- (a) an advanced practice registered nurse;
- (b) a certified nurse midwife;
- (c) a chiropractic physician;
- (d) a dentist;
- (e) an osteopathic physician;
- (f) a physician assistant;
- (g) a podiatric physician;
- (h) an optometrist;
- (i) a naturopathic physician; or
- (j) a mental health therapist as defined in Subsection 58-60-102(5).

(27) "Patient" means one or more individuals:

- (a) who receive medical and/or nursing care; and
- (b) to whom a licensee owes a duty of care.

(28) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

- (a) a parent;
- (b) a foster parent;
- (c) a legal guardian; or
- (d) a person legally designated as the patient's attorney-in-fact.

(29) "PN" means an unlicensed practical nurse.

(30) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

(31) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, preschool, kindergarten, or special education program.

(35) "Supervision" is defined as the following:

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

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

- (i) has given either written or verbal instructions to the person being supervised;
- (ii) is present within the facility in which the person being supervised is providing services; and
- (iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

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

- (i) has authorized the work to be performed by the person being supervised;
- (ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and
- (iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

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

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-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 31b.

R156-31b-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.

R156-31b-201. Board of Nursing – Membership.

In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:

- (1) one licensed practical nurse;
- (2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;
- (3) four RNs;
- (4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and
- (5) two public members.

R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

(2) The duties and responsibilities of the Advisory Peer Education Committee are to:

- (a) review applications for approval of medication aide training programs;
- (b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and
- (c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:

- (a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and
- (b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.

(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.

(2) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.

(3) Unless the APRN requests that both the APRN and RN licenses remain active, the registered nurse license shall be superseded upon the issuance of an advanced practice registered nurse license.

R156-31b-301a. LPN License – Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

- (a) demonstrate that the applicant:
 - (i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;
 - (ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;
 - (iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and
 - (B) has taken, but not passed the NCLEX-RN at least one time; or
 - (v)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and
 - (B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;
- (b) pass the NCLEX-PN examination pursuant to Section

R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current LPN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

(b) demonstrate that the PN prelicensing education completed by the applicant:

(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License – Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301b(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-RN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License – Education, Examination, and Experience Requirements.

(1) An applicant for licensure as an APRN shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist, pursuant to Section R156-31b-301e, and administered by a certification body approved by:

(i) the National Commission for Certifying Agencies; or

(ii) the Accreditation Board for Specialty Nursing Certification;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health

therapy practice; and

(C) include at least 2,000 clinical practice hours that are completed under the supervision of:

(I) an APRN specializing in psychiatric mental health nursing; or

(II) a licensed mental health therapist as delegated by the supervising APRN.

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, the applicant shall demonstrate:

(1)(a) within the year preceding the date of the application, the applicant successfully completed all three components of the CGFNS Certification Program and the credentials evaluation service professional report; and

(b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:

(i) completed the nursing education program;

(ii) worked as a nurse;

(iii) completed an approved re-entry program; or

(iv) obtained an advanced (baccalaureate, master's or doctorate) nursing degree from an accredited nurse education program; or

(2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and

(b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, Certified Nurse Midwife, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the approved education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(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 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply

with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing must work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-801, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been

approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: \$2,000 - \$7,500

second offense: \$7,500 - \$9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or

revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the

licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):

initial offense: \$4,000 - \$8,000

second offense: \$8,000 - \$10,000

(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):

initial offense: \$2,000 - \$5,000

second offense: \$5,000 - \$10,000

(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(jj) Failing to pay a penalty imposed by the Division, in

violation of Subsection 58-31b-502(14): double the original penalty amount up to \$20,000

(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsections 58-31b-502(1)(o), 58-31b-502(1)(r), and Section 58-31b-803:

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):

initial offense: \$250 - \$4,000

second offense: \$4,000 - \$8,000

(ss) Administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-31b-502.5(1):

first offense: \$500 - \$5,000

second offense: \$1,500 - \$10,000

ongoing offense(s): \$2,000 per day but not less than the second offense

(tt) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-31b-502.5(2):

first offense: \$500 - \$5,000

second offense: \$1,500 - \$10,000

ongoing offense(s): \$2,000 per day but not less than the second offense

(uu) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-31b-502.5(3):

first offense: \$5,000

second offense: \$10,000

ongoing offense(s): \$2,000 per day but not less than the second offense

(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be \$10,000 or \$2,000 per day.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nature of the nurse's relationship with the patient;

(f) engaging in disruptive behavior in the practice of nursing;

(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a); and

(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.

(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.

(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016 and had demonstrated to the satisfaction of the Board that the program:

(i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;

(ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:

(A) curricular organization and delivery method;

(B) student learning outcomes;

(C) student support;

(D) program administration and organization;

(E) learning environment and facilities;

(F) clinical learning and placements; and

(G) faculty and nurse administrator qualifications;

(iii) clearly informs students and potential students about its

accreditation status and the potential implications for future practice; and

(2) The provider of a program with limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (3), disclose to each student who enrolls:

- (a) that program accreditation is pending;
- (b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and
- (c) that, if the program fails to achieve accreditation on or before December 31, 2020, any student who has not yet graduated will not be made eligible for the NCLEX by the state of Utah.

(3) The disclosure required by this Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to December 31, 2020 or a final determination by the (accrediting body) will satisfy associated state requirements for licensure. If the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

- (a) immediately notify the Board of its accreditation status;
- (b) immediately and verifiably notify all enrolled students in writing of the program's accreditation status, including:
 - (i) the estimated date on which the accrediting body will make its final determination as to the program's accreditation; and
 - (ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and
- (c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation by December 31, 2020 or if a program loses its accreditation, the institution offering the program shall:

- (a) submit a written report to the Board within ten days of receiving formal notification from the accrediting body;
- (b) notify all matriculated and pre-enrollment nursing students about the program's accreditation status;
- (c) inform all nursing students who will graduate from a non-accredited program that they will not be eligible for initial licensure through Utah; and
- (d) submit a written plan to close the program and cease operations, if necessary.

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:

- (1) a Board-approved annual report by December 31 of each calendar year; and
- (2) copies of any correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for clinical or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

- (1) is approved by the home state Board of Nursing;
- (2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

- (a) are employed by the nursing education program;
- (b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;
- (c) are licensed in good standing in Utah or a Compact state if supervising face-to-face clinical or practica experiences; and
- (d) are affiliated with an institution of higher education; and
- (4) has a plan for selection and supervision of:
 - (a) faculty or preceptor; and
 - (b) the clinical activity, including:
 - (i) the selection of an appropriate clinical location, and
 - (ii) ensuring that each preceptor is licensed in good standing in Utah or a Compact state;
 - (5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and
 - (a) reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;
 - (6) submits an annual report to the Utah Board of Nursing by August 1 of each year; and
 - (a) includes in the annual report:
 - (i) an overview of the number of students placed in Utah facilities;
 - (ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a Compact state; and
 - (iii) a verification that it is currently accredited, in good standing, with its accrediting body.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(15)(g) and Subsection R156-31b-102(12), the delegation of nursing tasks in a non-school setting is further defined, clarified, or established as follows:

- (1) A delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.
- (2) Tasks Appropriate for Delegation - Prior Assessment Required.
 - (a) A delegator may not delegate to unlicensed assistive personnel, including a medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.
 - (b) A delegator may not delegate a task that is:
 - (i) outside the area of the delegator's responsibility;
 - (ii) outside the delegator's personal knowledge, skills, or ability; or
 - (iii) beyond the ability or competence of the delegatee to perform:
 - (A) as personally known by the delegator; and
 - (B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.
 - (c) A nursing task may be delegated if it meets the following criteria, as applied to each specific patient situation:
 - (i) it is considered routine care for the specific patient;
 - (ii) it poses little potential hazard for the patient;
 - (iii) it is generally expected to produce a predictable outcome for the patient;
 - (iv) it is administered according to a previously developed plan of care; and
 - (v) it does not inherently involve nursing judgment that cannot be separated from the procedure.
 - (d) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances, and evaluate the following factors to determine the degree of supervision required to ensure safe care:
 - (i) the stability and condition of the patient;
 - (ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(iv) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(v) any immediate risk to the patient if the task is not carried out.

(e) If a delegator, upon review of the criteria established in this Subsection, determines that a proposed delegatee cannot safely provide the requisite care, the delegator shall not delegate the task to the proposed delegatee.

(3) Instruction and Demonstration of Competency Prior to Delegation.

(a) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame; and

(iii) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task.

(b)(i) If the employing facility or agency requires initial and ongoing demonstration of competency of direct patient care tasks, and makes competency documentation available to the delegator, the delegator may use that competency documentation.

(ii) If the employing facility or agency does not require demonstration of competency or does not provide competency documentation that is satisfactory to the delegator, or if a task falls outside tasks in which the proposed delegatee has previously been proven competent, the delegator or qualified educator shall:

(A) require the proposed delegatee to provide to the delegator or qualified educator a physical or verbal demonstration of the delegated task; and

(B) document the observed or spoken demonstration.

(iii) Teaching of a task, demonstration of competency, and documentation may be conducted per individual or in a group training session.

(4) Supervision and Monitoring. During delegation, the delegator shall:

(a) provide ongoing appropriate supervision and evaluation of the delegatee;

(b) ensure that the delegator or another qualified nurse is readily available, either in person or by telecommunication, to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task; and

(c) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(5) Further Delegation Prohibited. A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(6) Internal Policies or Practices. Tasks that according to the internal policies or practices of a medical facility are required or allowed to be performed by an unlicensed person, shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop, in conjunction with the applicable student,

parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and

(b) ensure that the IHP is available to school personnel.

(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.

(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering medications that are routine for the student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose in a school setting:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

- (a) conduct a focused nursing assessment;
- (b) plan for and implement nursing care within limits of competency;
- (c) conduct patient surveillance and monitoring;
- (d) assist in identifying patient needs;
- (e) assist in evaluating nursing care;
- (f) participate in nursing management by:
 - (i) assigning appropriate nursing activities to other LPNs;
 - (ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;
 - (iii) observing nursing measures and providing feedback to nursing managers; and
 - (iv) observing and communicating outcomes of delegated and assigned tasks; and
- (g) serve as faculty in area(s) of competence.
- (2) RN. An RN shall be expected to:
 - (a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:
 - (i) complete a comprehensive nursing assessment; and
 - (ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;
 - (b) detect faulty or missing patient information;
 - (c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;
 - (d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;
 - (e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;
 - (f) correctly identify changes in each patient's health status;
 - (g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;
 - (h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;
 - (i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;
 - (j) appropriately advocate for patients by:
 - (i) respecting patients' rights, concerns, decisions, and dignity;
 - (ii) identifying patient needs;
 - (iii) attending to patient concerns or requests; and
 - (iv) promoting a safe and therapeutic environment by:
 - (A) providing appropriate monitoring and surveillance of the care environment;
 - (B) identifying unsafe care situations; and
 - (C) correcting problems or referring problems to appropriate management level when needed;
 - (k) communicate with other health team members regarding patient choices, concerns, and special needs, including:
 - (i) patient status and progress;
 - (ii) patient response or lack of response to therapies; and
 - (iii) significant changes in patient condition;
 - (l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:
 - (i) delegating tasks in accordance with these rules and applicable statutes; and
 - (ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;
 - (m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;
 - (n) if acting as a chief administrative nurse:
 - (i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;
 - (ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

- (B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and
- (iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;
 - (o) if employed by a department of health;
 - (i) implement standing orders and protocols; and
 - (ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;
 - (p) serve as faculty in area(s) of competence; and
 - (q) perform any task within the scope of practice of an LPN.
- (3) APRN.
 - (a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.
 - (b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN in Utah.
 - (c) An APRN who wishes to practice as an RN in a Compact state must reinstate, qualify for, and obtain an RN Compact license in Utah.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.

- (1) Under the supervision of a licensed nurse, an MAC may:
 - (a) administer over-the-counter medication;
 - (b) administer prescription medications;
 - (i) if expressly instructed to do so by the supervising nurse; and
 - (ii) via approved routes as listed in Subsection 58-31b-102(17)(b);
 - (c) turn oxygen on and off at a predetermined, established flow rate;
 - (d) destroy medications per facility policy;
 - (e) assist a patient with self administration; and
 - (f) account for controlled substances with another MAC or nurse physically present.
- (2) An MAC may not administer medication via the following routes:
 - (a) central lines;
 - (b) colostomy;
 - (c) intramuscular;
 - (d) subcutaneous;
 - (e) intrathecal;
 - (f) intravenous;
 - (g) nasogastric;
 - (h) nonmetered inhaler;
 - (i) intradermal;
 - (j) urethral;
 - (k) epidural;
 - (l) endotracheal; or
 - (m) gastrostomy or jejunostomy tubes.
- (3) An MAC may not administer the following kinds of medications:
 - (a) barium and other diagnostic contrast;
 - (b) chemotherapeutic agents except oral maintenance chemotherapy;
 - (c) medication pumps including client controlled analgesia; and
 - (d) nitroglycerin paste.
- (4) An MAC may not:
 - (a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or

during follow-up;

- (b) receive written or verbal patient orders from a licensed practitioner;
- (c) transcribe orders from the medical record;
- (d) conduct patient or resident assessments or evaluations;
- (e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;
- (f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;
- (g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or
- (h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified – Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be

on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program; and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified – Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

August 22, 2019

Notice of Continuation January 8, 2018

58-31b-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-50. Private Probation Provider Licensing Act Rule.
R156-50-101. Title.

This rule is known as the "Private Probation Provider Licensing Act Rule".

R156-50-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 50, as used in Title 58, Chapter 50 or this rule:

- (1) "Direct supervision of staff" means that the licensee is responsible to direct and control the activities of employees, subordinates, assistants, clerks, contractors, etc., and shall review, approve and sign off on all staff duties and responsibilities. Members of staff shall not engage in those duties and functions performed exclusively by the licensee as defined under R156-50-603.
- (2) "Client" means a criminal justice involved person.
- (3) "Evidence-based assessment tool" means a validated criminogenic tool that has been psychometrically tested for reliability, validity, sensitivity, and is widely recognized by human service professionals.
- (4) "Probation agreement" means the agreement outlining the terms and conditions the probationer shall comply with during probation in accordance with the court order.
- (5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-50-502.

R156-50-103. 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 50.

R156-50-104. 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.

R156-50-302. Qualifications for Licensure - Education and Equivalent Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the education and equivalent training requirements for licensure in Subsection 58-50-5(1) are defined, established and defined as follows:

- (1) The baccalaureate degree shall include major study in social work, sociology, psychology, counseling, law enforcement, criminal justice, corrections or other related fields.
- (2) The equivalent training shall consist of four years of full-time paid employment in private probation, social work, psychology, counseling, law enforcement, criminal practice, corrections or other related fields.

R156-50-303. 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 50 is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-50-304. Continuing Education.

- (1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and the continuing education requirement for renewal of licensure in Subsection 58-50-6(2), each person holding a license shall complete 40 hours of qualified continuing professional education (CPE) every two years.
- (2) Those persons who become licensed during the renewal period shall be required to complete a total number of CPE hours based upon a formula of five hours of CPE for each of the remaining quarters in the renewal period.
- (3) Programs will generally qualify for CPE if the program is

related to probation, social work, psychology, counseling, law enforcement, criminal practice, correction or other related fields and if the program will enhance professional development.

- (4) Training provided by the licensee for staff will not qualify.
- (5) It is the responsibility of the licensee to obtain qualifying CPE and document the CPE on forms supplied by the Division.
- (6) The Division may perform random audits to determine compliance with CPE.

R156-50-502. Unprofessional Conduct.

In accordance with Subsection 58-50-2(5), "unprofessional conduct" includes the following:

- (1) failing to comply with the continuing professional education requirement of Section R156-50-304;
- (2) failing to comply with the operating standards required for a presentence report;
- (3) failing to properly supervise the client as set forth in the probation agreement;
- (4) failing to disclose any potential conflict of interest relating to supervision of a client as set forth in Subsection 58-50-2(5), including the following circumstances:
 - (a) simultaneously providing mental health therapy services and private probation services to the same client;
 - (b) simultaneously providing education and/or rehabilitation services and private probation services to the same client; or
 - (c) while providing private probation services to a client, also providing any other service to the client for which the licensee receives compensation;
- (5) accepting any amount of money or gratuity from a client other than the fees which is set forth in the probation agreement;
- (6) failing to report any violation of the probation agreement; or
- (7) failing to comply with Utah Sentencing Commission Supervision Length Guidelines.

R156-50-601. Private Probation Services Standards - Probation Supervision.

In accordance with Subsection 58-50-9(5), the private probation services standards for probation supervision are established and defined as follows:

- (1) A private probation provider shall perform the following minimum services for each client referred by the court:
 - (a) conduct an initial client interview that includes an evidence-based risk/needs screening, and establish a plan of supervision (the "case plan");
 - (b) if indicated necessary by the risk/needs screening, conduct a risk/needs assessment using an evidence-based assessment tool;
 - (c) review the court order with the client and have the client sign the probation agreement;
 - (d) review with the client:
 - (i) the court ordered fines and other financial obligations; and
 - (ii) the fees for services to be charged to the client, pursuant to Section R156-50-604;
 - (e) after the initial client interview and any risk/needs assessment, conduct an individual, face-to-face interview with the client in accordance with the case plan and any risk/needs assessment as often as necessary to determine that the client is in compliance with the probation agreement and case plan, and not less than:
 - (i) monthly for a high risk client;
 - (ii) every two months for a moderate risk client; and
 - (iii) every three months for a low risk client; and
 - (f) submit written reports as required by the court.
- (2) A private probation provider shall post a notice of grievance procedures in a conspicuous location at the provider's place(s) of business, or make that notice otherwise available to each client. The notice shall include information on how to contact and file a complaint with the Division's investigation office.
- (3) A private probation provider shall report to the court

within three working days, or as directed by the court:

(a) any new known criminal law violations committed by the client; and

(b) any failure by the client to comply with the terms and conditions of the probation agreement, including payment of fines or other financial obligations.

(4)(a) At least 30 business days prior to the date of termination of any supervised probation, a private probation provider shall notify in writing the court and the office of the prosecuting attorney; and

(b) include with the notification a report outlining the client's compliance with terms and conditions of the probation agreement including payment of any fines and other financial obligations.

(5)(a) At least 30 business days prior to an early termination date, a private probation provider shall submit a report to the court with supporting rationale for early termination based on the Utah Sentencing Commission's Supervision Length Guidelines; and

(b) include in the report:

(i) Recent Response and Incentive Matrix (RIM) History;

(ii) information on any new criminal conduct;

(iii) Case Action Plan (CAP) or risk reduction progress;

(iv) treatment and programming progress;

(v) restitution payment history;

(vi) employment history, residence, and any other relevant factors;

(vii) a recommendation on the termination of supervision; and

(viii) for a client convicted of a sexual offense, the results from an exit polygraph conducted to determine any inappropriate conduct while on probation.

R156-50-602. Private Probation Services Standards - Preparing Presentence Investigative Reports.

In accordance with Subsection 58-50-9(5), the private probation services standards for preparing presentence investigative reports are established and defined as follows:

(1) A private probation provider shall gather the following information, if applicable and available:

(a) juvenile arrest and disposition records;

(b) adult arrest and disposition records;

(c) county attorney or city prosecutor file information;

(d) arresting officer's report;

(e) victim impact statement;

(f) driving history record, if the present offense is a driving offense;

(g) blood/breath alcohol content test results;

(h) treatment evaluations six months or newer;

(i) custody status and number of jail days served;

(j) findings from the risk/needs screening and any risk/needs assessments; and

(k) current situation, to include:

(i) employment;

(ii) living situation;

(iii) level of education;

(iv) military status;

(v) behavioral and physical health status; and

(vi) personal relationship status.

(2) A private probation provider shall conduct interviews with the client, and with the following when relevant and available:

(a) family;

(b) friends;

(c) victim(s);

(d) employers;

(e) military; and

(f) past and present treatment providers.

(3) A private probation provider shall:

(a) develop and provide report recommendations based upon the risk/needs screening and any risk/needs assessment;

(b) refer in the report to client information obtained from outside agencies, when appropriate for additional evaluation; and

(c) recommend restitution, when appropriate.

(6) A private probation provider shall submit the report to the court, defense attorney, and prosecutor at least three business days prior to sentencing.

R156-50-603. Private Probation Services Standards - Duties and Responsibilities of the Private Probation Provider and Staff.

In accordance with Subsection 58-50-9(5), the respective duties and responsibilities of the private probation provider and staff are established as follows:

(1) the duties and responsibilities of the private probation provider shall include the following:

(a) review, approve and sign all reports required under this chapter or ordered by the court;

(b) conduct with each client:

(i) an initial interview that includes an evidence-based risk/needs screening; and

(ii) an evidence-based risk needs assessment, if indicated;

(c) establish each client's case plan;

(d) conduct personal interviews with each client as determined by the risk/needs screening and any risk/needs assessment, to include:

(i) review of case plan; and

(ii) probation agreement compliance;

(e) conduct all interviews required in the preparation of the presentence report;

(f) when available, review Bureau of Criminal Investigation, Controlled Substance Database, Utah Court XChange, and other applicable data; and

(g) attend all evidentiary hearings as requested by the court.

(2) The duties and responsibilities of the staff under direct supervision of the private probation provider include the following:

(a) assist in the gathering of information and the preparation of reports;

(b) perform other monthly interviews;

(c) contact client by telephone or in person to determine compliance with the case plan;

(d) collect fines, restitutions and fees for services; and

(e) other clerical duties as assigned by the licensee.

R156-50-604. Private Probation Services Standards - Disclosures and Financial Responsibility.

In accordance with Subsection 58-50-9(5), the private probation service standards for disclosures and financial responsibility regarding services, are established and defined as follows:

(1) A private probation provider shall provide to each client in writing, and personally review with the client:

(a) the provider's current fee schedules for services, including fees for failure to pay for services; and

(b) the prohibition against providers providing services outside of the scope of their license.

(2) A private probation provider may not:

(a) split fees, send or receive any commission or rebate, or accept any other form of remuneration for referral of a client for professional services;

(b) accept any amount of money or gratuity from a client other than the fee set forth in the probation agreement;

(c) use the provider's relationship with the client for personal gain, or for the profit of any entity, agency, or commercial enterprise of any kind; or

(d) charge a client for services not rendered.

(3) A private probation provider shall:

(a) maintain and make available for inspection by the Division the provider's fee schedules; and

(b) make the provider's fee schedules available for review and approval by a court upon request.

R156-50-605. Private Probation Service Standard - Providing

Additional Services, Informed Consent, Display of Licensure.

In accordance with Subsection 58-50-9(5), the private probation service standards for providing additional services, informed consent, and display of licensure are established and defined as follows:

(1) A private probation provider may not simultaneously provide private probation services and other services to the same client, when the probation provider is also the licensed, registered, or certified provider of the other services.

(2)(a) A private probation provider shall obtain a client's prior written consent if private probation services will be provided by the licensee, and the licensee is the owner, officer, director, partner, proprietor, or responsible management personnel of any entity, agency, or commercial enterprise of any kind that will simultaneously provide other services to the client for compensation.

(b) Written consent shall be obtained by means of an informed consent form, signed and dated by the client before receiving private probation services, that includes at least the following:

(i) a description of other services, including any:

- (A) behavioral health services;
- (B) educational services;
- (C) substance use disorder services; or
- (D) rehabilitation services;

(ii) a separate paragraph describing how the client can withdraw consent;

(iii) a separate paragraph describing client grievance procedures, that includes information on how to contact and file a complaint with the Division's investigation office; and

(iv) a separate paragraph containing an acknowledgment of being informed of the potential conflict of interest.

(d) A signed and dated informed consent form shall be retained for three years from the termination of probation with the client.

(3) A private probation provider shall display a current copy of their Utah Private Probation Provider license in a conspicuous location at the provider's place of business. If a licensee provides private probation services at multiple business locations, the license shall be displayed at each location.

KEY: licensing, probation, private probation provider

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58-1-202(1)(a)

58-50-5(1)

58-50-9(5)

R277. Education, Administration.**R277-305. School Leadership License Areas of Concentration and Programs.****R277-305-1. 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) Subsection 53E-3-401(4), 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 53E-6-201, which permits the Board to issue certificates for educators.
- (2) The purpose of this rule is to:
- (a) specify the requirements for a professional school leadership license area of concentration;
 - (b) specify the standards which the Board expects of a school leadership preparation program prior to program approval.

R277-305-2. Definitions.

- (1) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by an LEA administrator or university preparation program faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective school leader.
- (2) "School leadership license area of concentration" means the initial credential issued by the Board that authorizes a holder to be employed as a school principal, vice-principal, or assistant principal.

R277-305-3. School Leadership License Area of Concentration Requirements.

- (1) The Superintendent shall issue a professional school leadership license area of concentration to an individual that applies for the license and meets all requirements in this section.
- (2) The requirements for a professional school leadership license area of concentration shall include:
- (a) a master's degree or more advanced degree;
 - (b) passage of a school leadership assessment approved by the Superintendent; and
 - (c)(i) a recommendation from a Board-approved school leadership preparation program pursuant to the process described in Rule R277-303; or
 - (ii) subject to Subsection (3), a valid school leadership license in another jurisdiction under the NASDTEC interstate agreement.
- (3) Prior to being awarded a school leadership license area of concentration, an applicant that holds a valid school leadership license in another jurisdiction under the NASDTEC interstate agreement as described in Subsection (2)(c)(ii) shall have completed:
- (a) at least one year of school leadership experience in that state; or
 - (b) a school leadership preparation program reasonably equivalent to a Board-approved school leadership preparation program pursuant to the process described in Rule R277-303.

R277-305-4. School Leadership Preparation Programs.

- (1) Prior to approval by the Superintendent, a preparation program for school leadership shall:
- (a) demonstrate how it will prepare candidates to meet the Utah educational leadership Standards described in R277-530;
 - (b) subject to Subsection (2), establish weighted entry requirements that consider prior leadership experiences of applicants and are designed to select high quality candidates to enter the licensure program;
 - (c) include school-based clinical experiences for a candidate to observe, practice skills, and reflect on school leadership that:
 - (i) are significant in number, depth, breadth, and duration;
 - (ii) are progressively more complex;

- (iii) occur in multiple schools;
 - (iv) include working with both elementary and secondary teachers and students; and
 - (v) occur throughout the preparation program;
 - (d) require the demonstration of competency in:
 - (i) properly utilizing data, including student performance data, to evaluate educator and school performance and provide actionable information to educators to improve instruction;
 - (ii) facilitating educator use of technology to support and meaningfully supplement the learning of students;
 - (iii) collaborating with stakeholder groups to create a shared vision, mission, and goals for a school;
 - (iv) implementing the shared vision, mission, and goals for a school:
 - (A) as a principal; and
 - (B) as an assistant principal supporting the school principal;
 - (v) communicating effectively with parents, community groups, staff, and students;
 - (vi) recognizing effective and ineffective instructional practice in order to ensure authentic learning and assessment experiences for all students;
 - (vii) implementing a multi-tiered system of supports in individual classrooms and the school as a whole;
 - (viii) counseling and coaching educators in relation to the educator's evaluation, professional learning, and student performance to improve the educator's practice;
 - (ix) understanding the laws and legal ramifications surrounding school leadership decisions and practices;
 - (x) understanding the requirements and LEA responsibilities of the IDEA;
 - (xi) ensuring a safe, secure, emotionally protective, and healthy school environment, including the prevention of bullying and youth suicide;
 - (xii) establishing and maintaining a school culture that supports inquiry, risk-taking, innovation, and learning of both students and teachers; and
 - (xiii) connecting management operations, policies, and resources to the vision and values of the school.
- (2) Beginning on January 1, 2020, the entry requirements described in Subsection (1)(b) shall require an individual entering a Board-approved education leadership licensure program to:
- (a) clear a USBE fingerprint background check described in:
 - (i) statute; and
 - (ii) background check rule;
 - (b) hold a:
 - (i) Utah professional educator license; or
 - (ii) an equivalent out of state license;
 - (c) have been deemed effective or higher by:
 - (i) an evaluation system meeting the standards of R277-531;
- or
- (ii) the LEA's equivalent on the applicant's most recent evaluation;
 - (d) have a confidential recommendation from:
 - (i) the individual's immediate administrative supervisor; or
 - (ii) an LEA-level administrator with knowledge regarding the individual's potential as a school leader; and
 - (e) pass an interview conducted by the program to measure the potential of the individual as a school leader.
- (3) Board-approved education leadership licensure program may waive the entrance requirements described in Subsections (2)(b) through (e) based on program established guidelines for no more than ten percent of an incoming cohort.
- (4) For a program applicant accepted on or after January 1, 2020, an -approved school leadership licensure program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in each of the following competencies:
- (a) analyzing school assessment data from common formative

assessments, summative assessments, standardized assessments, and interim or benchmark assessments with school staff and with individual teachers;

(b) administering all aspects of a teacher evaluation system that meets the requirements of:

(i) R277-531; or

(ii) the LEA's equivalent;

(c) administering all aspects of an evaluation system for a classified employee;

(d) planning, organizing, conducting, and evaluating the effectiveness of a professional learning activity for school staff;

(e) supporting or overseeing a school-based learning team;

(f) working with a School Community Council, including the annual development and evaluation of a school's Teacher and Student Success Act plan and School LAND Trust plan;

(g) performing formal and informal classroom observations for the purpose of improving instruction;

(h) acting as the LEA representative in IEP and 504 accommodation plan meetings;

(i) appropriately handling cases of student discipline referred to the school office;

(j) supervising school activities and monitoring the process for collecting and handling fees and gate receipts; and

(k) implementing a school's screening and hiring process, including interviews and the notification of successful and unsuccessful applicants.

R277-305-5. Superintendent Responsibilities.

(1) The Superintendent shall ensure that the model mentoring program required under Rule R277-308 includes induction for new school leaders.

(2) The Superintendent shall explore the adoption of a performance-based school leadership assessment and make related recommendations to the Board by September 1, 2020.

(3) The Superintendent shall include a list of resources for potential school leadership candidates to help them prepare for school leadership on the Utah Leading through Effective and Dynamic Education website.

(4) The Superintendent shall implement a network for principal.

(5) The Superintendent shall create a depository of school principal learning resources that can be utilized by LEAs in the Utah Leading through Effective and Dynamic Education website.

**KEY: school leadership license, program
August 19, 2019**

**Art X Sec 3
53E-3-401(4)
53E-6-201**

R277. Education, Administration.**R277-322. LEA Codes of Conduct.****R277-322-1. 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 53E-3-401(4), 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 63G-7-301, which requires the Board to create a model policy that regulates behavior of a school employee toward a student.
- (2) The purpose of this rule is to require LEAs to create a code of conduct/appropriate behavior policy applicable to the LEA's staff.

R277-322-2. Definitions.

- (1) "Boundary violation" means the same as that term is defined in R277-515.
- (2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.
- (3) "Sexual conduct" means any sexual contact or communication between a staff member and a student, including:
- (a) "sexual abuse" as defined in Section 76-5-404.1;
- (b) "sexual battery" as defined in Section 76-9-702.1; or
- (c) a staff member and student sharing any sexually explicit or lewd communication, image, or photograph.

R277-322-3. Required Code of Conduct Policy.

- (1) The Superintendent shall create a model code of conduct/appropriate behavior policy.
- (2) Each LEA shall adopt a code of conduct/appropriate behavior policy applicable to the LEA's staff.
- (3) An LEA's code of conduct/appropriate behavior policy, adopted pursuant to Subsection (2), may not be less stringent than the model code of conduct/appropriate behavior policy described in Subsection (1) and shall include, at a minimum:
- (a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;
- (b) a statement that a staff member may not subject a student to:
- (i) physical abuse;
- (ii) verbal abuse;
- (iii) sexual abuse; or
- (iv) mental abuse;
- (c) a statement that a staff member shall report any suspected incidents of:
- (i) physical abuse;
- (ii) verbal abuse;
- (iii) sexual abuse;
- (iv) mental abuse; or
- (v) neglect;
- (d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;
- (e) a statement that a staff member may not participate in sexual conduct with a student;
- (f) a statement regarding appropriate verbal or electronic communication between a staff member and a student;
- (g) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;
- (h) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;
- (i) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;
- (j) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;
- (k) a statement that a staff member is required to:
- (i) report any suspicion of child abuse or bullying to the

proper authorities;

- (ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and
- (iii) for an employee or contractor, annually attend abuse prevention training required in Section 53G-9-207; and
- (3) An LEA shall post the LEA's code of conduct/appropriate behavior policy adopted pursuant to Subsection (2) on the LEA's website.
- (4) An LEA shall annually provide training to staff regarding the policy, including the staff member's responsibility to report and how to report:
- (a) known violations of the LEA's code of conduct/appropriate behavior policy; and
- (b) known violations of the Utah Educator Standards contained in R277-515.
- (5) A staff member shall annually sign a statement acknowledging that the staff member has read and understands the code of conduct/appropriate behavior policy.

KEY: codes of conduct, appropriate behavior, employee conduct
August 19, 2019

Art X Sec 3
53E-3-401(4)
63G-7-301

R277. Education, Administration.**R277-471. School Construction Oversight, Inspections, Training and Reporting.****R277-471-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Certified plans examiner" means a professional who has current applicable commercial certification through the International Code Council (ICC).
- C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers consistent with Sections 53G-5-305, 53G-5-306, and this rule or by the Board under Section 53G-5-304.
- D. "Charter school responsible person or local charter school board building officer or designee (CSBBO)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with Utah law and the Resource Manual on behalf of the charter school board.
- E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53E-3-706, 53E-3-708, 10-9a-305, 17-27a-305, 58-56, Section 15A, State Construction and Fire Code Act, as well as the provisions of R156-56 and this rule. The form is available on the USOE School Finance Section website.
- F. "Certificate of occupancy" means the document issued upon receipt of the final inspection from the inspector of record and the 'Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying compliance with all minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes permanent usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space.
- G. "Division" means the Division of Finance with technical assistance from the Department of Technology Services.
- H. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(13).
- I. "Inspector" means a professional who holds current applicable commercial certification through the International Code Council (ICC) and is currently licensed in the state of Utah in the applicable trades the inspector is performing inspections.
- J. "LEA" means local education agency, including local school boards/public school districts and charter schools.
- K. "New school building project" means the construction of a school that did not previously exist in an LEA.
- L. "Public school construction" means construction work on a new or existing public school building.
- M. "School Building Construction and Inspection Resource Manual, April 30, 2013, (Resource Manual)" means a manual which identifies the processes and procedures an LEA shall follow when constructing a new public school building, maintenance, or renovating existing buildings. The Resource Manual was developed by the USOE consistent with Section 53E-3-707, is available on the USOE School Finance website, and is hereby incorporated by reference consistent with Section 63G-3-201(7).
- N. "School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with Utah law and the Resource Manual.
- O. "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution or replacement of an existing school in an LEA with a project cost equal to or in excess of \$2,000,000.
- P. "Superintendent" means the State Superintendent of Public

Instruction.

Q. "Temporary certificate of occupancy" means the document issued upon receipt of the temporary final inspection report from the inspector of record and the 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes temporary usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space, valid for a specific time period.

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

R277-471-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53E-3-706 and 53E-3-707 which direct the Superintendent to enforce requirements and provisions about public school building and alteration, verify inspections of school buildings, and provide information annually to LEAs about the construction and inspection of public school buildings, and Subsection 53E-3-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify LEA board responsibilities and accountability to the Board.

R277-471-3. LEA Responsible Person.

A. LEA boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with the law to provide minimum requirements to safeguard the public health, safety and general welfare of occupants while using the most comprehensive, cost effective and efficient design means and methods.

(1) Local school boards shall appoint a SDBO who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with Utah law and the Resource Manual. Each local charter school board shall appoint a CSBBO who has direct operational responsibility for construction, renovation, and inspection of the charter school. The CSBBO shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

C. The CSBBO shall monitor all charter school building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

D. The SDBO and CSBBO shall ensure that public school construction conforms with the intent and purpose of Utah law and the Resource Manual.

E. The SDBO and CSBBO may adopt and enforce supplemental LEA policies under appropriate LEA policies to clarify the application of the provisions of Utah law and the Resource Manual for LEA personnel.

R277-471-4. School Construction Inspectors.

A. LEAs shall employ inspectors for school construction inspection who are currently ICC commercially certified and licensed in Utah, in the trade specific to the inspection, consistent with Utah law and the Resource Manual requirements.

B. LEAs shall choose one of three methods for inspections:

(1) Independent inspectors:

(a) shall be approved by the local jurisdiction in which the construction activity occurs;

(b) may include inspectors working outside the municipality, county, or school district in which they are employed; and

(c) shall not be any of the following, nor an employee of: the architect, developer, contractor, a subcontractor working on the project, any management company or other agency hired by the LEA to perform construction or construction administrative services.

(2) School district inspectors shall be employed by and perform school construction inspections within the boundaries of the school district.

(3) Inspectors employed by municipalities and counties may perform school construction inspections within the boundaries of the municipality or county where they are employed.

R277-471-5. School Construction Inspections.

A. Before any school construction project begins, the SDBO or CSBBO shall obtain a construction project number from the USOE by completing and submitting construction project identification forms provided by the USOE and other required submittals for all projects consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual.

B. The appropriate currently certified plans examiner shall approve all LEA school plans and specifications before any LEA construction project begins.

C. If an LEA is unable to provide appropriate and proper school construction inspection and plan review services, the Superintendent may procure inspection services and charge the LEA for those services. The approved inspector shall establish fees in advance of inspection services.

D. LEA construction projects shall comply with Title 53E, Chapter 3, Part 7 and the Resource Manual to:

(1) ensure that each inspector is adequately and appropriately credentialed;

(2) identify and provide to the USOE and local government entity building official reports of all inspections with the name, state license number, and disciplines of each inspector performing the project inspections;

(3) submit inspection certificates and all related submittals to the USOE and appropriate local government entity building official;

(4) submit inspection summary reports monthly to the appropriate local government entity building official and the USOE;

(5) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with all applicable laws and rules, and the Resource Manual to safeguard the public health, safety and general welfare of occupants;

(6) send the final inspection certification, inspection verification, and provide all other related project closeout submittals to the USOE and to the appropriate local government entity building official upon completion of the project; and

(7) maintain all submitted documentation at a designated LEA location for auditing or monitoring.

E. The SDBO/CSBBO may submit paper or electronic reports to satisfy this section.

R277-471-6. Coordination with Local Governments, Utility Providers and State Fire Marshal.

A. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans

and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the public school construction and future roadways; and

(4) maximize school, student and site safety.

B. LEAs shall cooperate with municipalities and counties and conform to municipal and county land use ordinances consistent with Sections 10-9a-305 and 17-27a-305.

C. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local health departments and the State Fire Marshal.

D. A charter school shall have an open meeting to seek and secure a variance from the appropriate government entity if the LEA selects a school site in a municipality or county-designated zone for sexually oriented businesses or businesses that sell alcohol.

E. Parking requirements for a charter school may not exceed the minimum parking requirements for a traditional public school of a like size and grade levels or other institutional public use throughout the municipality or county.

F. LEAs shall maintain documentation for audit purposes of coordination, meetings, and agreements required under this section.

G. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local jurisdictions to comply with Federal Emergency Management Agency flood plain requirements and restrictions, including applicable mitigation measures.

R277-471-7. Superintendent's Authority to Request Additional Inspections.

A. The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing temporary or permanent occupancy of the public school building.

B. The Superintendent may charge the LEA a fee not to exceed the actual cost of performing the inspection(s) for inspection services.

R277-471-8. Certification of Occupancy.

A. School districts:

(1) After completion of the project when a school district's appropriately credentialed inspector provides inspections, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(2) After completion of the project when a local jurisdiction provides inspections, the school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the SDBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

B. Charter schools:

(1) After completion of the project and inspection by an appropriately credentialed inspector when a charter school contracts with a school district for inspections, the CSBBO shall obtain a completed certificate of inspection verification form from the SDBO certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the jurisdiction where the public school is located.

(2) After completion of the project when a local jurisdiction provides inspections, a charter school shall seek a certificate authorizing permanent occupancy of a school building from the

jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the CSBBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

C. Within 30 days after the LEA files a request for the issuance of a certificate authorizing permanent occupancy of the school building from the USOE, the Superintendent shall:

(1) issue to the LEA a certificate authorizing permanent occupancy of the school building; or

(2) deliver to the LEA board a written notice indicating deficiencies in the LEA's compliance with the inspection findings.

D. If the Superintendent does not issue the certificate authorizing permanent occupancy, the LEA shall provide notice of the deficiency to the building official of the local government entity in which the public school building is located.

E. Upon the LEA board filing the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the LEA shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the LEA has complied with all minimum requirements to safeguard the public health, safety and general welfare of occupants.

F. Upon the LEA remedying any deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building.

G. Upon receipt of the certificate of occupancy, the LEA shall provide a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

R277-471-9. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute a Resource Manual, or provide an electronic version, on the USOE School Finance website, consistent with Section 53E-3-707.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction, operations, maintenance, minimum requirements to safeguard the public health, safety and general welfare of occupants, and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board and LEA boards, as well as LEA personnel, shall act consistent with the Resource Manual.

R277-471-10. School Construction Guidelines.

A. The Board shall adopt public school construction guidelines that take into consideration the factors identified in Section 53E-3-702 and other factors identified by USOE staff or the Division of Facilities Construction and Management Administration staff.

B. LEAs shall review and take into consideration the school construction guidelines when planning and prior to proceeding with public school construction.

R277-471-11. Enforcement.

A. An LEA which fails to comply with the provisions of this rule is subject to interruption of state dollars by the Board consistent with Subsections 53E-3-401(3) and 53F-2-202(4)(d).

(1) If an LEA fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the Superintendent shall, as directed by the Board, send the school district superintendent or local charter school director notice by certified mail; and

(2) If after 30 days the requirement has not been met, the

USOE may, as directed by the Board, interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupts the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month);

(2) inform the Board at its next regularly scheduled meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. An LEA may be subject to a nonrefundable fine in the amount of one half of one percent of the total construction costs if an LEA fails to report a public school construction project consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual to the USOE.

(1) The USOE, under the direction of the Board, shall deduct nonrefundable fine amounts from the respective LEA's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) The USOE shall deposit school district nonrefundable fine amounts into the School Building Revolving Account; and

(b) The USOE shall deposit charter school nonrefundable fine amounts into the Charter School Building Subaccount within the School Building Revolving Account.

R277-471-12. Appeals Procedure for Nonrefundable Fines.

A. The Board designates the procedure outlined in R277-471-12 as an informal adjudicative proceeding, under Section 63G-4-203.

B. LEA boards may appeal a fine assessed under R277-471-11C consistent with the following:

(1) An LEA may not appeal a fine until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) An LEA must file the appeal within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) An LEA shall deliver or provide electronically the appeal to the USOE as provided by the appeal form.

(5) An LEA shall provide, as stated on the form, an explanation of unanticipated or compelling circumstances that resulted in the local board's or charter school's failure to report new construction or remodeling projects as required.

(6) The school district superintendent or local charter board chair shall provide a notarized statement that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the LEA board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or LEA business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

C. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

D. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further administrative appeal opportunity.

R277-471-13. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each LEA and interested persons involved in the school building construction, design, operation, maintenance, safety and related industries.

B. Conference presenters and participants shall provide and discuss current information and training on public school building construction and inspection, including:

- (1) the design, construction, operation and the inspection process of public school buildings;
- (2) public school building site selection;
- (3) best building life-cycle costing;
- (4) construction inspection requirements and schedules; and
- (5) information to improve the existing public school building design, construction, operation and safety inspection program.

R277-471-14. School Plant Capital Outlay Report.

A. The Board shall prepare an annual School Plant Capital Outlay Report of all school construction projects completed and under construction, including information on the number and size of buildings.

B. An LEA shall prepare and submit an annual School Plant Capital Outlay Report to the Utah Public Finance website, consistent with Section 63A-3-402, for each new school building construction project or significant school remodel, completed between July 1, 2004 and May 13, 2014. An LEA shall submit the report no later than May 15, 2015. For new school building projects or significant remodel projects completed after May 13, 2014, the LEA shall provide the School Plant Capital Outlay Report to the Division annually, by a date designated by the Division.

C. The School Plant Capital Outlay Report shall include information required under Section 63A-3-402(6)(c).

D. The LEA shall report to the Utah Public Finance website the actual cost, fee, or other expense for any figures required to be reported under R277-471-14B.

E. The report shall be in a format, including any raw data or electronic formatting, prescribed by applicable Division policy.

F. The Division may require an LEA to provide further itemized data on information listed in Section 63A-3-402(b) or R277-471-14B.

KEY: educational facilities

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Art X Sec 3

53E-3-401(3)

53E-3-706

53E-3-707

10-9a-305

17-27-105

53F-2-202(4)(d)

R277. Education, Administration.**R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program.****R277-477-1. 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) Subsection 53F-2-404(2)(d), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) In accordance with Section 53D-2-202, through representation on the Land Trusts Protection and Advocacy Committee, the Board exercises trust oversight of:
- (a) the Common School Trust;
 - (b) the School for the Deaf Trust; and
 - (c) the School for the Blind Trust.
- (3) The Board implements the School LAND Trust Program and provides oversight, support, and training for school community councils and Charter Trust Land Councils consistent with Subsection 53G-7-1206(2), Rule R277-491, and this Rule R277-477.
- (4) The purpose of this rule is to:
- (a) provide financial resources to a public school to implement a component of a school's Teacher and Student Success Plan in order to enhance and improve student academic achievement;
 - (b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;
 - (c) provide direction in the distribution of funds from the Trust Distribution Account, as funded in Section 53F-2-404;
 - (d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;
 - (e) provide for proper allocation of funds as stated in Section 53F-2-404, and the appropriate and timely distribution of the funds;
 - (f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and
 - (g) define the roles, duties, and responsibilities of the Superintendent with regards to the School Children's Trust.

R277-477-2. Definitions.

- (1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.
- (2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.
- (b) "Charter trust land council" includes a charter school governing board if:
 - (i) the charter governing board meets the two-parent majority requirement; and
 - (ii) the charter school governing board chooses to serve as the charter trust land council.
 - (3) "Council" means a school community council or a charter trust land council.
 - (4) "Digital citizenship" means the same as that term is defined in Section 53G-7-1202.
 - (5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.
 - (6) "Funds" means School LAND Trust program funding as defined in Section 53F-2-404.
 - (7) "Most critical academic need" means an academic need

identified in a school's Teacher and Student Success Plan.

(8) "Parent," for a charter school, includes a grandparent of a student currently enrolled at the school.

(9)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes the director of a charter school.

(10) "Satellite charter school" has the same meaning as that term is defined in Section R277-482-2.

(11) "School safety principles" has the same meaning as described in Section 53G-7-1202.

(12) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of an LEA.

(13) "Trust Distribution Account" means the restricted account within the Uniform School Fund created under Subsection 53F-9-201(2).

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust Program funds shall have:

(a) a school community council as required by Section 53G-7-1202 and Rule R277-491;

(b) a charter school trust land council as required by Section 53G-7-1205; or

(c) an approved exemption under this rule.

(2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-4 and Subsection 53G-7-1206(3)(c), prior to the public school receiving a distribution of School LAND Trust Program funds.

(3) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council;

(b) be subject to Section 53G-7-1203 if the charter trust land council is not a charter school governing board; and

(c) receive training about Section 53G-7-1206.

(4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53G-7-1205(9) upon application to the school's authorizer if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

(5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan, approved by the school's governing board, to the School Children's Trust Section on the School LAND Trust website:

(a) no later than April 1; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

(6)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Subsection 53G-7-1206(4)(d).

(7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption from a school using the Superintendent-provided form, described in Subsection (7)(a), on a case-by-case basis.

(8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall

include the date the council voted to approve the plan.

(9)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's signature, as described in Subsection (9)(a), digitally or through a paper form created by the Membership Form on the website and uploaded to the database.

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An approving entity for a school district shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the School Children's Trust Section that the review is complete.

(11)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement needed to implement plan goals.

(b) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53G-7-1206 to the members of the approving entity.

(12)(a) After receiving the notice described in Subsection (10)(c), the School Children's Trust Section shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The School Children's Trust Section shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the School Children's Trust Section is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(13) If an approving entity fails to comply with Subsection (12)(c), the Superintendent may report the failure to the Audit Committee of the Board as described in Section R277-477-9.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall review school-wide assessment data annually and use School LAND Trust Program funds in data-driven and evidence-based ways to improve educational outcomes, including:

(a) strategies that are measurable and show academic outcomes with multi-tiered systems of support; and

(b) counselors and educators working with students and

families on academic and behavioral issues when a direct impact on academic achievement can be measured.

(2) School LAND Trust Program expenditures are required to have a direct impact on the instruction of students in the particular school's areas of most critical academic need.

(3) A school may not use School LAND Trust Program funds for the following:

(a) to cover the fixed costs of doing business;

(b) for construction, maintenance, facilities, overhead, security, or athletics; or

(c) to pay for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school district or local school board may not require a council or school to spend the school's School LAND Trust Program funds on a specific use or set of uses.

(5)(a) A council may budget and spend no more than \$7,000 for in-school civic and character education, including student leadership skills training, digital citizenship training, and implementing school safety principles.

(b) A school may designate School LAND Trust Program funds to implement school safety principles or for an in-school civic or character education program or activity only if the plan clearly describes how the program or activity has a direct impact of the instruction of students in a school's areas of most critical academic need.

(6) Notwithstanding other provisions in this rule, a school may use funds as needed to implement a student's Individualized Education Plan.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust Program may not exceed \$2 per awarded student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1)(a) A local school board or charter school governing board shall report the prior year expenditure of distributions for each school.

(b) The total expenditures each year described in Subsection (1)(a) may not be greater than the total available funds for any school or school district.

(c) A school district shall adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53F-2-404, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

(3)(a) For purposes of this Subsection (3) and Subsection (4), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (3)(c); and

(ii) is not a newly opening charter school as described in Subsection (4).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (3).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (3)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

(4)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (2)(c); or

(ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

(5) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the Superintendent shall deposit the unused balance in the Trust Distribution Account.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53G-7-1206(4)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval; and

(ii) approve an amendment before the school uses funds according to the amendment.

(c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The Superintendent shall recommend a district or school with a consistently large carryover balance over multiple years for corrective action for not making adequate and appropriate progress on an approved plan.

(c) The Superintendent may take corrective action to remedy excessive carryover balances consistent with Rule R277-114.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Subsection 53G-7-1206(5)(b).

(6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

(1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

(b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

(2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The Superintendent shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The Superintendent shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

R277-477-8. Superintendent Responsibilities.

The Superintendent shall:

(1) represent the Board on the Land Trusts Protection and Advocacy Committee in accordance with Section 53D-2-202;

(2) review and approve a charter school plan on behalf of the State Charter School Board;

(3) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with statute and rule;

(4) review and approve a plan submitted by the USDB school community council as necessary;

(5) prepare the annual distribution of funds to implement the School LAND Trust Program pursuant to Section 53F-2-404;

(6) report the total distribution amount for the following fiscal year to the Legislative Fiscal Analyst before December 31 annually;

(7) provide training to entities involved with the School LAND Trust Program consistent with Subsection 53G-7-1206(8); and

(8) implement corrective action, if appropriate, consistent with Rule R277-114 if an LEA or its council fails to comply with the provisions of this rule.

KEY: schools, school community councils, trust lands funds

August 19, 2019

Art X Sec 3

Notice of Continuation August 13, 2015

53A-16-101.5(4)

53A-1-401

R277. Education, Administration.**R277-491. School Community Councils.****R277-491-1. 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) Subsection 53E-3-401(4), 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 procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53G-7-1202 through 53G-7-1203;
 - (b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;
 - (c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;
 - (d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;
 - (e) increase public awareness of:
 - (i) school trust lands;
 - (ii) the permanent State School Fund; and
 - (iii) educational excellence; and
 - (f) enforce compliance with the laws governing a school community council.
- (3) This rule does not apply to charter schools.

R277-491-2. Definitions.

- (1) "Local school board" means the locally elected school board designated in Section 53G-4-201.
- (2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.
- (b) "Principal" includes a specific designee of the principal.
- (3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.
- (4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

- (1) In addition to the election notice requirements of Section 53G-7-1202, the principal shall provide notice of:
 - (a) the location where a ballot may be cast; and
 - (b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.
- (2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.
 - (b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.
- (3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot through a district approved election process that is consistent with the election requirements in Subsection 53G-7-1202(5).
 - (b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.
- (4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.
- (5)(a) A public school that is a secure facility, juvenile

detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

- (i) recruit members;
 - (ii) have meetings; and
 - (iii) publicize the opportunity to serve on the council.
- (b) A local school board shall make the determination whether to grant the exemption for a school described in Subsection (5)(a).

R277-491-4. School Community Council Principal Responsibilities.

- (1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:
 - (a) the school community council's election;
 - (b) that vacancies were filled by election if necessary; and
 - (c) that the school community council's bylaws or procedures comply with Section 53G-7-1202, Rule R277-477, and this rule.
- (2) In addition to the requirements of Subsections 53G-7-1203 (5) and (6), each year the principal shall post the following information on the school's website on or before October 20:
 - (a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds;
 - (b) the dollar amount the school receives each year from the School LAND Trust Program;
 - (c) a copy of or link to the current Teacher and Student Success Plan as required in Section 53G-7-1302; and
 - (d) minutes of approved council meetings for the current school year.

R277-491-5. School Community Council Chair Responsibilities.

- (1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53G-7-1202(5)(j).
 - (2) The school community council chair shall:
 - (a) set the agenda for every meeting;
 - (b) conduct every meeting;
 - (c) keep written minutes of every meeting, consistent with Section 53G-7-1203;
 - (e) inform council members about resources available on the School LAND Trust Program website; and
 - (f) welcome and encourage public participation in school community council meetings.
 - (3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

- (1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53G-7-1203(10).
 - (b) The rules of order and procedure shall outline the process for:
 - (i) electing the school community council, including:
 - (A) the number of parent members and school employee members on the council; and
 - (B) beginning dates for the term of each member's position;
 - (ii) selecting a chair and vice chair;
 - (iii) removing from office a member who moves away or fails to attend meetings regularly; and
 - (iv) a member to declare a conflict of interest if required by the local school board's policy.
 - (2) The school community council shall:
 - (a) report on a plan, program, or expenditure at least annually to the local school board; and
 - (b) encourage participation on the school community council

by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsections 53G-7-1203(3)(a)(iii)(D), (iv), and (v).

(b) The report described in Subsection (3)(a) shall include:

(i) information concerning internet filtering protocols for school and district devices that access the internet;

(ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training provided to a student and parent by the school or district.

(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53F, Chapter 2, Part 5.

(4) A school community council shall comply with the requirements of Subsection 53G-7-1202(3)(vi).

(5) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

KEY: school community councils

August 19, 2019

Notice of Continuation August 13, 2015

Art X Sec 3

53E-3-401(4)

53A-1a-108

53A-1a-108.1

53G-7-12

R277. Education, Administration.**R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure.****R277-504-1. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the licensing of educators, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which the Board expects a teacher preparation institution to meet in specific areas for the institution to receive Board approval of the program.

R277-504-2. Definitions.

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

B. "Council for Exceptional Children" is an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal public school programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons shall meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, an individual shall have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

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

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

I. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

J. "Internship" means the placement of a teacher education student in an advanced stage of preparation, as a culminating experience, in employment in a school setting for a period of up to one school year during which the intern shall receive salary proportionate to the service rendered as determined by the LEA. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a

planned program designed to produce a demonstrably competent professional.

K. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

M. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

N. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary license areas carry endorsements for the areas in which the holder is qualified to provide instruction.

O. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which indicates that the holder's preparation focused on teaching students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which indicates that the holder's preparation focused on teaching students with severe learning and behavior problems;

(3) Deaf and Hard of Hearing Endorsement which indicates that the holder's preparation focused on teaching students who are deaf or other hearing impaired;

(4) Blind and Visually Impaired Endorsement which indicates that the holder's preparation focused on teaching students who are blind or other visually impaired; and

(5) Deafblind Endorsement which indicates that the holder's preparation focused on teaching students who are both blind or other visually impaired and deaf or other hearing impaired.

P. "Student teaching" means the placement of a teacher education student in an advanced stage of preparation for a period of guided teaching in a school setting during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

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

R277-504-3. General Standards for Approval of Programs for the Preparation of Teachers.

A. The Board may approve the educator preparation program of an institution if the institution:

(1) prepares candidates to meet the Utah Effective Teaching Standards in R277-530;

(2) prepares candidates to teach the Utah Core Standards, the Utah Early Childhood Core Standards, and the Essential Elements as appropriate to the area of licensure as established by the Board;

(3) requires candidates to maintain a cumulative university GPA of 3.0 and receive a C or better in all education related courses and major required content courses:

(a) This requirement applies to candidates admitted to the program after January 1, 2015.

(b) A candidate admitted to the program with a GPA below

3.0 under the 10 percent waiver provided in R277-502-3D shall maintain an overall GPA of 3.0 for all coursework completed after the candidate's admission to the program;

(4) requires the study of:

(a) content and content-specific pedagogy appropriate for the area of licensure;

(b) knowledge and skills designed to assist in the identification of students with disabilities and to meet the needs of students with disabilities in the regular classroom. Knowledge and skills shall include the following domains:

(i) knowledge of disabilities under IDEA and Section 504 of the Rehabilitation Act;

(ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) skills in providing tier one instruction on the Utah Core Standards and positive behavior supports to students with disabilities within a multi-tiered system of supports including:

(A) assessing and monitoring the education needs and progress of students with disabilities;

(B) implementing and assessing the results of interventions; and

(C) skills in the implementation of an educational program with accommodations and modifications established by an IEP or 504 plan for students with disabilities in the regular classroom; and

(c) knowledge and skills designed to meet the needs of diverse student populations in the regular classroom. These skills for diverse student populations shall include the skills to:

(i) allow teachers to create an environment using a teaching model that is sensitive to multiple experiences and diversity;

(ii) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs; and

(iii) incorporate tools of language development into planning and instruction for English language learners and support development of English proficiency; and

(5) requires a student teaching culminating experience that:

(a) requires a minimum of 400 clock hours with at least 200 clock hours in a single placement;

(b) requires that student teachers meet the same contract hours as licensed teachers in the same LEA;

(c) requires that the student teacher not be employed in any capacity by the LEA where he is placed except as provided in R277-504-7B;

(d) includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable student teaching placement in one or more of the candidate's endorsement areas is available; or

(ii) the candidate is seeking a license in Elementary (1-8) and is completing an elementary student teaching placement, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes direct supervision of the candidate by a classroom teacher that:

(i) has been jointly selected by the institution student teaching placement officer and the LEA-designated authority over student teaching placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) has received training from the institution on the role and responsibilities of a classroom mentor teacher for student teachers, including the standards of R277-515;

(g) include meaningful self-reflection with review and feedback from both the classroom mentor teacher and institution personnel; or

(6) Requires an internship culminating experience that:

(a) consists of full-time employment as an educator for one school year with a minimum of 1260 clock hours at a single school site;

(b) requires that interns meet the same contract teaching hours

as licensed teachers in the same LEA;

(c) includes placement in the major content or licensure area in which the candidate shall be licensed;

(d) where possible, includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable internship in one or more of the candidate's non-major endorsement areas could be found; or

(ii) the candidate is seeking licensure in Elementary (1-8) and is completing an elementary internship, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes an LEA assigned mentor that:

(i) has been jointly selected by the institution internship placement officer and the LEA-designated authority over internship placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) provides direct support and supervision to the intern during the regular school day in addition to the standard LEA supports of new teachers.

(g) includes meaningful self-reflection with review and feedback from both the assigned mentor and institution personnel;

B. The Board may accept the following for an individual candidate as completely or partially satisfying the student teaching/internship requirement:

(1) one year of full-time contract teaching experience in a teaching position as defined in R277-503-4(C)(4) in a public or accredited private school in the candidate's proposed licensure content areas may completely satisfy the requirement;

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

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

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

R277-504-4. Early Childhood Education (K-3) and Elementary (K-6) License Areas.

A. The Board may approve the Early Childhood Education (K-3), Elementary (K-6), Elementary (1-8) teacher preparation program of an institution if the program:

(1) is aligned with the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs or the 2007 Association for Childhood Education International Standards for Elementary Level Teacher Preparation, as appropriate; and

(2) requires study and experiences which provide appropriate content knowledge needed to teach:

(a) literacy including listening, speaking, writing, and reading;

(b) mathematics;

(c) physical and life science;

(d) health and physical education;

(e) social studies; and

(f) fine arts; and

(3) includes coursework specifically designed to prepare teachers:

(a) in the science of reading instruction including phonemic awareness, phonics, fluency, vocabulary and comprehension;

(b) in the science of mathematics instruction including quantitative reasoning, problem solving, representation, and numeracy;

(c) with the technical skills to utilize common education technology;

(d) to integrate technology to support and meaningfully supplement the learning of students;

(e) to facilitate student use of software for personalized learning;

(f) to teach effectively in traditional, online-only, and blended

classrooms;

(g) to design, administer, and review educational assessments in a meaningful and ethical manner;

(h) in early childhood development and learning, if it is an Early Childhood Education (K-3), or Elementary (K-6); and

(i) in a specific content area resulting in an endorsement added to the license area, if it is an Elementary (1-8) program.

B. The standards shall be applied to the specific age group or grade level for which the program of preparation is designed.

(1) An Early Childhood Education (K-3) program shall focus primarily on early childhood development and learning.

(2) An Elementary (K-6) shall include both early childhood development and learning and elementary content and pedagogy.

(3) An Elementary (1-8) shall focus primarily on elementary content and pedagogy.

C. A teacher holding an Elementary (1-8) license area may earn an Early Childhood (K-3) license area by completing specific coursework requirements established by USOE.

D. An Elementary (1-8) license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

E. An Elementary (1-8) license permits the teacher to teach specific content courses at the 7th or 8th grade level only if the teacher's license includes the appropriate endorsement.

R277-504-5. Secondary (6-12) License Area.

A. A Secondary (6-12) license area with endorsement(s) is valid in grades six through twelve.

B. A Secondary (6-12) license area requires a major or major equivalent in a content area, but the teacher cannot teach in an elementary self-contained class.

C. The Board may approve the secondary educator preparation program of an institution if the program:

(1) is an undergraduate level program and requires candidates to have completed:

(a) an approved content area or teaching major consistent with subjects taught in Utah secondary schools; and

(b) content coursework reasonably equivalent to that required for individuals completing a non-teaching degree in the subject; or

(2) Is a graduate level program and requires candidates to have completed:

(a) a bachelor's degree or higher from an accredited university; and

(b) coursework equivalent to the minimum requirements for an endorsement as established by USOE, including the appropriate content knowledge assessment; and

(3) includes coursework specifically designed to prepare candidates:

(a) with the technical skills necessary to utilize common education technology;

(b) to integrate technology to support and meaningfully supplement the learning of students;

(c) to facilitate student use of software for personalized learning;

(d) to teach effectively in traditional, online-only, and blended classrooms;

(e) to design, administer, and review educational assessments in a meaningful and ethical manner; and

(f) to include literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards.

D. After completing a Board-approved Secondary (6-12) educator preparation program, the license area shall be endorsed for all subjects in which the candidate has met the course requirements for the endorsement as established by USOE.

(1) A content area or teaching major requires not fewer than 30 semester hours of credit in one content area.

(2) An endorsement requires not fewer than 16 semester hours of credit in one content area.

R277-504-6. Special Education (K-12+) and Preschool Special

Education (Birth-Age 5).

A. The Board may approve an institution's special education teacher preparation program if the program is aligned with the 2011 Council for Exceptional Children Special Education Standards for Professional Practice and is focused in one or more of the following special education areas:

(1) Mild/Moderate Disabilities

(2) Severe Disabilities

(3) Deaf and Hard of Hearing;

(4) Blind and Visually Impaired;

(5) Deafblind; or

(6) Preschool Special Education (Birth-Age 5).

B. The Board may issue teachers who hold Special Education (K-12+) license areas additional endorsements if all endorsement requirements are met. Teachers who hold only a Special Education (K-12+) license area may only be assigned as a teacher of record of students with disabilities.

C. The Board may approve a special education preparation program of an institution if the program includes coursework specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding special education;

(2) comply with IDEA and Utah State Board of Education Special Education Rules;

(3) work with other school personnel to implement and evaluate academic and positive behavior supports and interventions for students with disabilities within a multi-tiered system of supports;

(4) train and monitor education teachers, related service providers, and paraeducators in providing services and supports to students with disabilities;

(5) provide the necessary specialized instruction, as per IEPs, to students with disabilities, including

(a) core content from the Utah Early Childhood Core Standards and the Essential Elements and content specific pedagogy;

(b) skills in assessing and addressing the educational needs and progress of students with disabilities;

(c) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(d) skills in the implementation of an educational program with accommodations and modifications established by an IEP for students with disabilities.

D. The Board may issue Blind and Visually Impaired/Deaf and Hard of Hearing Endorsements required under this rule to meet the highest requirements in the State applicable to a specific profession or discipline required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

E. Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (Birth-Age 5) or vision impaired (Birth-Age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Deaf and Hard of Hearing (Birth-Age 5) or Blind and Visually Impaired (Birth-Age 5) or both.

R277-504-7. Miscellaneous.

A. Beginning with the 2015-2016 school year, an LEA that employs intern teachers shall have a policy that includes the following:

(1) the maximum number of interns that may be supported by each LEA assigned mentor, and

(2) a specific resource commitment to significant and quality LEA support services to interns.

B. The Middle Level license (5-9) continues to be valid; however, the Board has not issued a middle level license (5-9) since April 1, 1989 and it is no longer required of teachers or issued to teachers assigned to the middle school.

C. Consistent with LEA and university policy and R277-508-5E, a student teacher may work as a paid substitute in the classroom

of the student teacher's classroom mentor teacher for no more than five days and no more than three consecutive days per university semester.

D. On the days a student teacher is working as a substitute teacher, the candidate's legal status as a substitute teacher/district employee will take precedence over the legal status as a teacher candidate.

E. A student teaching placement may be changed to an internship placement upon agreement of the student teacher, the university program, and the LEA.

KEY: teacher licensing, professional education

May 8, 2015

Notice of Continuation August 6, 2019

Art X Sec 3

53E-3-501(1)(a)

53E-3-401(4)

R277. Education, Administration.**R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.****R277-522-1. 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) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Subsection 53E-6-103(2)(a)(iii), which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; and
 - (d) Section 53E-6-301, which directs the Board to establish rules for the training and experience required of educator license applicants.

(2) The purpose of this rule is to outline required entry years enhancements of professional and emotional support for Level 1 teachers to develop successful teaching skills and strategies with assistance from experienced colleagues.

R277-522-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as set forth in Subsection R277-512-2(1).

(2) "Entry years" means the three years a beginning teacher holds a Level 1 license.

(3) "Interstate New Teacher Assessment and Support Consortium" or "INTASC" means the organization that has established Model Standards for Beginning Teacher Licensing and Development, which include ten principles reflecting what beginning teachers should know and be able to do as a professional teacher.

(4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(5) "Level 1 license" has the same meaning as set forth in Subsection R277-503-2(9).

(6) "Level 2 license" has the same meaning as set forth in Subsection R277-503-2(10).

(7) "Level 3 license" has the same meaning as set forth in Subsection R277-503-2(11).

(8) "Mentor" means a Level 2 or Level 3 educator, who is trained to advise and guide Level 1 teachers.

(9) "Praxis II" or "Praxis II - Principles of Learning and Teaching" is a widely-used standards-based test designed by the Educational Testing Services to assess a beginning teacher's pedagogical knowledge.

(10) "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background consistent with Rule R277-501.

(11) "Teaching assessment or evaluation" means an observation of a Level 1 teacher's instructional skills by a school district or school administrator using an evaluation tool based on or similar to INTASC principles.

(12) "Working portfolio" means a collection of documents prepared by a Level 1 teacher and used as a tool for evaluation.

R277-522-3. Required Entry Years Enhancements Requirements for a Level 1 Teacher to Advance to a Level 2 License.

(1) Prior to advancement to a Level 2 license, a Level 1 teacher shall:

- (a) satisfactorily collaborate with a trained mentor;
- (b) pass a required pedagogical exam;
- (c) complete three years of employment and evaluation; and
- (d) compile a working portfolio.

(2) A principal shall assign a mentor to each Level 1 teacher in the first semester of teaching to supervise and act as a resource for

the entry level teacher.

(3) A mentor teacher shall teach in the same school, and where feasible, in the same subject area as the Level 1 teacher.

(4) A mentor assigned in accordance with Subsection (2) shall:

- (a) hold a Level 2 or 3 license; and
- (b) have completed a mentor training program including continuing professional development.

(5) A mentor assigned in accordance with Subsection (2) shall:

(a) guide the Level 1 teacher to meet the procedural demands of the school and school district;

(b) provide moral and emotional support;

(c) arrange for opportunities for the Level 1 teacher to observe teachers who use various models of teaching;

(d) share personal knowledge and expertise about new materials, planning strategies, curriculum development and teaching methods;

(e) assist the Level 1 teacher with classroom management and discipline;

(f) support the Level 1 teacher on an ongoing basis;

(g) help the Level 1 teacher to understand the implications of student diversity for teaching and learning;

(h) engage the Level 1 teacher in self-assessment and reflection; and

(i) assist with development of the Level 1 teacher's portfolio.

(6) A Level 1 teacher shall pass the Praxis II with a qualifying score of at least 160 prior to advancing to Level 2 licensure.

(a) A Level 1 teacher may take the Praxis II successive times.

(b) The Superintendent shall post a Level 1 teacher's Praxis II results in CACTUS.

(7) A Level 1 teacher shall successfully complete evaluation through an LEA or accredited private school.

(a) A Level 1 teacher shall maintain full employment for three years in an LEA or accredited private school.

(b) An employing LEA or accredited private school may, following evaluation of a Level 1 teacher's experience, determine that teaching experience outside of the Utah public schools satisfies the teaching experience requirement of this rule.

(c) An LEA has discretion in determining the employment or reemployment status of individuals.

(d)(i) A Level 1 teacher's employing LEA or accredited private school is responsible for conducting the evaluations required under this rule.

(ii) An LEA may assign evaluations required under this rule to a school principal.

(e) A Level 1 teacher's evaluations shall take place at least twice during the first year of teaching and at least twice during each of the following two years with a satisfactory final evaluation.

(8) A Level 1 teacher shall compile a working portfolio during the teacher's entry years.

(a) A Level 1 teacher's employing LEA or accredited private school shall review and evaluate the portfolio.

(b) The Superintendent may review the portfolio upon request during the Level 1 teacher's second year of teaching.

(9) A portfolio required under Subsection (8) shall be based upon INTASC principles; and may:

(a) include teaching artifacts;

(b) include notations explaining the artifacts; and

(c) include a reflection and self-assessment of the teacher's own practice; or

(d) be interpreted broadly to include the employing LEA's or accredited private school's requirement of samples of the first year teaching experience.

R277-522-4. Satisfaction of Entry Years Enhancements.

(1) If a Level 1 teacher fails to complete all enhancements as enumerated in Section R277-522-3, the Level 1 teacher may remain in a provisional employment status until the Level 1 teacher

completes the enhancements.

(a) An LEA or accredited private school may make a written request to the Superintendent for a one year extension of the Level 1 license in order to provide time for the educator to satisfy entry years enhancements.

(b) A Level 1 teacher may repeat some or all of the entry years enhancements.

(c) An opportunity to repeat or appeal an incomplete or unsatisfactory entry years enhancements process shall be designed and offered by the employing LEA or accredited private school.

(2) An LEA or accredited private school shall make an annual recommendation to the Board of teachers approved in its schools to receive a Level 2 license, including documentation demonstrating completion of the enhancements.

(3) An LEA or accredited private school may also report the names of teachers who did not successfully complete entry years enhancements to the Board.

(4) The Superintendent shall prepare an annual report tracking the success of retention and the job satisfaction of Utah educators who complete the entry years enhancement program.

R277-522-5. Sunset Clause.

(1) This rule will sunset on June 30, 2023.

(2) An individual holding a current Level 1 license on January 1, 2020 may be upgraded to a Level 2 license without completing the requirements of Subsection R277-522-3(6).

KEY: mentoring, teachers

August 19, 2019

**Art X Sec 3
Notice of Continuation September 13, 2017 53E-6-103(2)(a)(iii)
53E-6-301
53E-3-401(4)**

R277. Education, Administration.**R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds.****R277-528-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Article X, Section 3 of the Utah Constitution, which places general control and supervision of public education in the Board;
 - (b) Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state;
 - (c) Subsection 53F-2-514(3)(c)(ii) which requires the Board to make a rule that provides for repayment of a portion of the initial payment by the teacher if the teacher fails to complete the university program with exceptions; and
 - (d) Subsection 53F-2-514(5)(b) which directs the Board to develop criteria for PEJEP awards.
- (2) The purpose of this rule is to provide standards and procedures for ongoing participation in PEJEP.

R277-528-2. Definitions.

- (1) "Council for Accreditation of Educator Preparation" or "(CAEP)" is a nationally recognized organization that accredits professional teacher education programs in institutions offering baccalaureate and graduate degrees for K-12 teachers.
- (2) "PEJEP award" means an award granted to an eligible PEJEP participant pursuant to Section 53F-2-514 and R277-528.
- (3) "PEJEP Participant" means a qualified teacher with an approved application pursuant to Section 53F-2-514 and R277-528;
- (4) "Public Education Job Enhancement Program (PEJEP)" means the program authorized under Subsection 53F-2-514(2).

R277-528-3. PEJEP Participants.

- (1) If an application is filed on behalf of a qualified teacher pursuant to Subsection 53F-2-514(3)(a) and approved by the Superintendent, the PEJEP participant shall:
- (a) commit to required courses for advanced degrees and endorsements consistent with Subsection 53F-2-514(2);
 - (b) provide documentation annually, by October 1, to the Superintendent, demonstrating full-time employment as an educator during the previous school year;
 - (c) notify the Superintendent of the participant's satisfaction of the participant's four year teaching commitment as described by Subsection 53F-2-514(3); and
 - (d) provide required documentation to receive textbook reimbursements which will be reimbursed directly to the PEJEP participant by the Superintendent.
- (2) If a PEJEP participant changes employers, leaves public education, or moves from the state, the Superintendent may require repayment or partial repayment, consistent with Subsection 53F-2-514(3).

R277-528-4. University Program Eligibility.

- (1) A university program that provides licensure and endorsements in the areas outlined in Subsection 53F-2-514(2) and meets the criteria of this section shall be eligible to receive tuition reimbursement for a PEJEP participant.
- (2) To be an eligible university program, the university shall:
- (a) be a Utah institution of higher education;
 - (b) provide documentation to the Superintendent of the university's program accreditation by CAEP; and
 - (c) provide to the Superintendent an overview of the university's endorsement program including:
 - (i) program requirements and eligibility standards for participants;
 - (ii) a screening process for prospective participants;
 - (iii) course syllabi; and
 - (iv) a yearly evaluation of the program.
- (3) The Superintendent may determine the eligibility of a university's program on an annual basis.

- (4) The Superintendent shall reimburse tuition directly to an eligible university's program for a PEJEP participant.

R277-528-5. Evaluation.

- (1) The Superintendent shall maintain records of PEJEP award participants.
- (2) The Superintendent shall prepare an annual report for the Board that demonstrates use of PEJEP funding consistent with Section 53F-2-514 and.

KEY: educators, awards**August 19, 2019****Notice of Continuation February 8, 2019****Art X Sec 3****53F-2-514****53E-3-401(4)**

R277. Education, Administration.**R277-600. Student Transportation Standards and Procedures.****R277-600-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public schools in the Board;
 - (b) Subsection 53E-3-501(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;
 - (c) Sections 53F-2-402 and 53F-2-403, which provide for distribution of funds for transportation of public school students;
 - (d) Section 53F-2-417, which directs the Board to make rules to implement rural school district transportation grants; and
 - (e) Subsection 53E-3-401(4), 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 specify the standards under which school districts may qualify for and receive state transportation funds.

R277-600-2. Definitions.

- (1) "ADA" means average daily attendance.
- (2) "ADM" means average daily membership.
- (3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.
- (4) "Annual Program Report" or "APR" has the same meaning as defined in Section R277-484-2.
- (5)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.
- (b) All approved costs are adjusted by the Superintendent consistent with a Board-approved formula per the annual legislative transportation appropriation.
- (6) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.
- (7) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parent or guardian.
- (8) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.
- (9) "Local school board" means a local school district board of education.
- (10) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.
- (11) "Public route" means a road, thoroughfare, walkway, or highway.
- (12) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53F-2-403(5).
- (13) "Pupil Transportation Schedule A1" means a report submitted annually to the Superintendent covering all estimated miles and minutes of to/from pupil transportation within an LEA.
- (14) "Out-of-pocket expense" means gasoline, oil, and tire expenses.

R277-600-3. General Provisions.

- (1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.
- (b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.
- (2) Allowable transportation costs are divided into two

categories:

- (a) A Category costs include expenditures for regular bus routes established by the school district, and approved by the state.
- (b) B Category costs include other methods of transporting students to and from school.
- (3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.
- (4) The Superintendent shall approve B Category costs on a line-by-line basis after:
 - (a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and
 - (b) accounting for legislative appropriation variations.
- (5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which shall specify the methods used to calculate allowable transportation costs.
- (6) The Superintendent shall develop uniform forms for the administration of the transportation program.
- (7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.
- (b) An LEA may maintain records and financial worksheets during the fiscal year for audit purposes.

R277-600-4. Eligibility.

- (1) The Superintendent shall only disburse state transportation funds for transporting eligible students.
- (2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53F-2-403(1) and (2), to the school attended by assignment of the local school board.
- (3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.
- (4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.
- (5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.
- (6) The distance from home to school is determined as follows: From the center of the public route open to public use, opposite the regular entrance where the pupil is living, over the nearest public route open regularly for use by the public, to the center of the public route open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

- (1)(a) A student with a disability shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.
- (b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.
- (2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.
- (3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

R277-600-6. Bus Route Approval.

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

(2) The Superintendent may approve exceptions for good cause shown.

(3) A bus route shall:

(a) traverse the most direct public road;

(b) be reasonably cost-effective in comparison to other feasible alternatives;

(c) provide adequate safety for students;

(d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(e) include an economically appropriate number of students.

(4)(a) The minimum number of general education students required to establish a bus route is ten.

(b) The minimum number of students with disabilities required to establish a bus route is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

(5) A school district shall designate safe areas for bus stops.

(6)(a) A student's parent or guardian is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A parent or guardian with a student that has a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

(7)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

(8) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

(a) the route promotes efficient transportation for both districts;

(b) the route serves a group or community of students and families rather than a single student or a single family;

(c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

(9) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

(10)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

(i) elementary double sessions;

(ii) year-round school; and

(iii) attendance across school district boundaries.

(11)(a) A school district may use local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(i) the local school board has a policy that includes approval of trips at the appropriate administrative level;

(ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(iii) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and

(iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

(i) the routes are necessary;

(ii) the routes are more cost-effective; or

(iii) the routes provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

(1) The Superintendent shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying a parent or guardian of an eligible student an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A parent or guardian of a student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than \$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedule or ride buses that are on significantly different schedules, a parent or guardian may claim and be paid for student mileage allowances for multiple students.

(7) If a student eligible for reimbursement under this Section R277-600-7 or the student's parent or guardian is unable to provide private transportation, with prior approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation.

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) The student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent or guardian may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent or guardian who maintains a separate home during the school year for the convenience of the family.

(ii) A parent or guardian's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed one percent of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

- (a) eligible student counts;
- (b) bus route mileage;
- (c) bus route minutes; and
- (d) service to students with disabilities and bus inventory data.

R277-600-8. Other Reimbursable Expenses.

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

- (i) 10 minute pre-trip inspection;
- (ii) actual driving time;
- (iii) 10 minute post-trip inspection and bus cleanup; and
- (iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance);

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses and travel for supervisors to workshops or national conventions;

(8) supplies and materials for vehicles, the school district transportation office and the garage;

(9) training expenses to complete bus driver instruction and certification required by the Board; and

(10) other related costs approved by the Superintendent, which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

- (i) federal, state, county, or municipal entities;
- (ii) entities insured by State Risk Management;
- (iii) non-government entities; or
- (iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

- (A) cost per mile;
- (B) cost per minute; and
- (C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral; and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

R277-600-10. Board Local Levy.

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53F-8-302.

(2) The revenue from the Board Local Levy may be used for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

- (i) volume, type, and speed of vehicular traffic;
- (ii) age and condition of students traversing the area;
- (iii) condition of the roadway, sidewalks and applicable means of access in the area; and
- (iv) environmental conditions.

(c) A local school board may designate hazardous conditions.

R277-600-11. Exceptions.

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to these rules from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and
- (e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school bus on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

R277-600-12. Rural School Transportation Reimbursement Program.

(1) The Superintendent shall annually determine which LEAs are eligible for rural school transportation reimbursement using the criteria described in Subsection 53F-5-211(1)(a).

(2) The Superintendent shall measure eligibility based on:

- (a) the most recent October 1 UTREx submission; and
- (b) the prior year's transportation data submitted in accordance with Section R277-484-3.

(3) By November 1 annually, the Superintendent shall notify an LEA that the LEA may seek reimbursement.

(4) An LEA eligible for reimbursement shall:

(a) provide evidence to the Superintendent in the first year of the LEA's eligibility that the LEA has provided transportation to and from the school for the past five years;

(b) submit to the Superintendent in the first year of the LEA's eligibility the LEA's current year pupil transportation Schedule A1 by December 30; and

(c) in subsequent years of eligibility, submit all transportation reports in accordance with Section R277-484-3.

(5) Submission of the pupil transportation Schedule A1 shall constitute an annual application and request for reimbursement by an LEA with an eligible school.

(6)(a) The Superintendent shall calculate and process reimbursements to LEAs once a year.

(b) The Superintendent shall determine allowable costs eligible for reimbursement taking into account:

- (i) eligible routes; and
- (ii) eligible miles and minutes as reported on the pupil transportation Schedule A1.

(c) The Superintendent shall reimburse an LEA based on the LEA's percentage of total unreimbursed eligible costs submitted.

(d) If the annual appropriation is insufficient to fund all submitted eligible cost payments, the Superintendent shall prorate the reimbursement up to the amount of the appropriation.

(7) An LEA shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

- (a) a school's eligibility in accordance with Subsection (1); and
- (b) allowability of an LEA's submitted costs.

R277-600-13. Rural School District Transportation Grant Program.

(1) The Superintendent shall annually determine which school districts are eligible for the rural school district transportation grant program using the criteria described in Subsection 53F-2-417(2).

(2) The Superintendent shall measure school district eligibility based on:

(a) the prior year's transportation data submitted in accordance with Section R277-484-3; and

(b) the most recent county classification.

(3)(a) By November 1 annually, the Superintendent shall notify a school district that the school district may apply for a grant and the amount of available grant funds based on the prior-year eligible miles for unreimbursed costs associated with activities described in 53F-2-417(3).

(b) The Superintendent shall prorate an eligible school district's award amount up to the amount of the appropriation.

(4) A school district eligible for the grant program shall:

(a) provide assurance within the school district's application that matching funds from the school district's board local levy will be utilized for the purposes outlined in Subsection 53F-2-417(1); and

(b) report revenue from the board local levy and related expenditures for the grant program in the school district's Annual Program Report for that specific fiscal year.

(5)(a) The Superintendent shall process the grant award in the state's grants management system

(b) The Superintendent shall allocate funds to eligible school districts once a year.

(6) A school district shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

- (a) a school's eligibility in accordance with Subsection (1); and
- (b) allowability of an LEA's submitted program costs.

(7) If a school district does not comply with the requirements of the grant program, the Superintendent may impose corrective action in accordance with Rule R277-114.

KEY: school buses, school transportation

August 19, 2019

Notice of Continuation September 15, 2016

Art X Sec 3

53E-3-501(1)(d)

53E-3-401(4)

53F-2-415

53F-2-403

R277. Education, Administration.

R277-607. Truancy Prevention.

R277-607-1. Definitions.

- A. "Absence" means a student's non-attendance at school for one school day or part of one school day.
- B. "Habitual truant" means a school-age minor who:
 - (1) is at least 12 years old;
 - (2) is subject to the requirements of Section 53G-6-202; and
 - (3)(a) is truant at least five times during one school year; and
 - (b) fails to cooperate with efforts on the part of school authorities to resolve the minor's attendance problem as required under Section 53G-6-206.
- C. "Habitual truant citation" is a citation issued only consistent with Section 53G-6-203.
- D. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).
- E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.
- F. "Truant" means absent without a valid excuse.
- G. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the LEA policy.
- H. "USOE" means the Utah State Office of Education.
- I. "Valid excuse" means an excuse for an absence from school consistent with Subsection 53G-6-201(9).

R277-607-2. 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, Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities, and Section 53G-6-206 which directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or should be enrolled in LEAs.
- B. The purpose of this rule is to direct LEAs to establish procedures for:
 - (1) informing parents about compulsory education laws;
 - (2) encouraging and monitoring school attendance consistent with the law; and
 - (3) providing firm consequences for noncompliance.
- C. This rule encourages meaningful incentives for parental responsibility and directs LEAs to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

- A. Each LEA board shall develop a truancy policy that encourages regular, punctual attendance of students, consistent with this rule and Title 53G, Chapter 6, Part 2, Compulsory Education, and shall review the policy annually.
- B. LEA boards shall annually review attendance data and consider revisions to policies to encourage student attendance.
- C. LEAs shall make truancy policies available for review by parents or interested parties.
- D. LEAs may issue habitual truant citations to students consistent with Section 53G-6-203.

R277-607-4. LEA Responsibilities.

- A. LEAs shall:
 - (1) establish definitions not provided in law or this rule necessary to implement a compulsory attendance policy;
 - (2) include definitions of approved school activity under Subsection 53G-6-201(9)(c) and excused absence to be provided locally under Subsection 53G-6-201(9)(e);
 - (3) include criteria and procedures for preapproval of extended absences consistent with Section 53G-6-205; and
 - (4) establish programs and meaningful incentives which

promote regular, punctual student attendance.

- B. LEAs shall include in their policies provisions for:
 - (1) notice to parents of the policy;
 - (2) notice to parents as discipline or consequences progress;
- and
 - (3) the opportunity to appeal disciplinary measures.
- C. LEAs shall establish and publish procedures for use by school-age minors or their parents to contest notices of truancy.

**KEY: compulsory education, truancy
October 9, 2014
Notice of Continuation August 6, 2019**

**Art X Sec 3
53E-3-401(4)
53G-6-206**

R277. Education, Administration.**R277-706. Public Education Regional Service Centers.****R277-706-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Eligible regional service center" means a regional service center formed by two or more school districts by means of an interlocal entity in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.
- C. "USOE" means the Utah State Office of Education.

R277-706-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Subsection 53G-4-410(6), that directs the Board to make rules regarding eligible regional services center, and Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide definitions and procedures for school districts to form interlocal agreements and to provide for distribution of legislative funds to eligible regional service centers by the Board.

R277-706-3. Eligible Regional Service Centers.

- A. Two or more school districts may enter into an interlocal agreement and form an interlocal entity.
- B. An eligible regional service center may receive funds if the Legislature appropriates money.
- C. An interlocal agreement shall confirm and ratify the regional service center as of the effective date of the interlocal agreement.

R277-706-4. Distribution of Funds.

- A. The USOE shall distribute funds, if provided by the Legislature, in equal amounts to eligible regional service centers based on:
 - (1) requests from eligible regional service centers; and
 - (2) satisfaction and submission of all information and requirements set by the Board.
- B. The USOE shall provide notice that completed applications for regional service center funds are due to the USOE consistent with timelines provided by the USOE.
- C. The Board may review and consider a different distribution plan for future years.
- D. Legislative funding, if provided, shall be distributed to eligible regional service centers after July 1 annually.

R277-706-5. Eligible Regional Service Center Responsibilities.

- A. Eligible regional service centers shall submit an annual application for available funds to the Board consistent with USOE timelines.
- B. A regional service center application for funds shall include:
 - (1) a copy of completed interlocal agreement(s);
 - (2) a proposed budget and request for funds from the Board;
 - (3) a current external audit of current regional service center assets and liabilities in the initial application for funds and with each annual application;
 - (4) assurance signed by all parties to the interlocal agreement that the USOE shall have access to all regional service center records upon request;
 - (5) an annual financial report from the previous fiscal year; and
 - (6) a plan for the use and distribution of regional service center funds for the applicable fiscal year with specific attention to delivery of Utah Education Network and Telehealth services and the delivery of education-related services.
- C. A regional service center shall provide an annual performance report beginning with fiscal year 2012 including information about:
 - (1) the regional service center delivery of Utah Education and Telehealth Network services;
 - (2) the type, amount, and effectiveness of delivery of public and higher education related services; and
 - (3) the coordination of public and higher education related services.

**KEY: eligible regional service centers
October 9, 2014
Notice of Continuation August 6, 2019**

**Art X Sec 3
53G-4-410(6)
53E-3-401(4)**

R277. Education, Administration.**R277-707. Enhancement for Accelerated Students Program.****R277-707-1. 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 53F-2-408, which requires the Board to establish a distribution formula for the expenditure of funds appropriated for the Enhancement for Accelerated Students Program; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2)(a) The purpose of this rule is to specify the procedures for distributing funds appropriated under Section 53F-2-408 to LEAs.
- (b) The intent of this appropriation is to provide resources to LEAs to enhance the academic growth of students whose academic achievement is accelerated.

R277-707-2. Definitions.

- (1) "Accelerated students" means students participating in accelerated programs.
- (2) "Accelerated programs" means student services with increased depth, complexity, or rigor, which may include above-grade level coursework, including:
- (a) Gifted and Talented programs;
 - (b) IB programs; or
 - (c) AP courses.
- (3) "Advanced placement" or "AP" courses means rigorous courses developed by the College Board where:
- (a) each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course; and
 - (b) students who perform well on the AP exam may be:
 - (i) granted credit; or
 - (ii) advanced standing at participating colleges or universities.
- (4)(a) "Gifted and talented programs" means programs to identify, through multiple assessment instruments, and serve students with outstanding abilities in the following areas:
- (i) general intellectual ability;
 - (ii) specific academic aptitude; and
 - (iii) creative or productive thinking.
- (b) Instruments for identifying gifted and talented students shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.
- (5) "International Baccalaureate" or "IB" Program means one of the following programs established by the International Baccalaureate Organization:
- (a) the Diploma Program;
 - (b) the Middle Years Program; or
 - (c) the Primary Years Program.
- (6) "Underrepresented students" means a subset of students, as determined by an LEA and approved by the Superintendent, that holds a smaller percentage in a program as compared to the overall LEA population.
- (7) "Weighted Pupil Unit" means the basic state funding unit.

R277-707-3. Eligibility and Application.

- (1) All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds annually.
- (2) An LEA shall have a process for identifying students whose academic achievement would benefit from the support of accelerated programs.
- (3) To receive program money, an LEA shall submit an application to the Superintendent that includes an LEA's plan for:
- (a) how the LEA intends to engage all parents so that parents understand the opportunities available for their children in elementary, middle school, high school and beyond, including how

the LEA will comply with Rule R277-462;

- (b) how the LEA intends to spend program money; and
 - (c) how the LEA intends to eliminate barriers and increase student enrollment, in accelerated academic programs, including underrepresented students.
- (4) The Superintendent shall publish expectations, growth percentage capacities, timelines, funding dates, and required submission dates related to an LEA application and plan for increasing enrollment, including underrepresented students, in accelerated academic programs.

R277-707-4. Distribution and Use of Funds.

- (1) The Superintendent shall distribute Enhancement of Accelerated Students program funds as follows:
- (a) the greater of 1.5% or \$100,000 to support IB programs;
 - (b) 60% of the total EASP allocation to LEAs to support Gifted and Talented programs; and
 - (c) the remaining funds to LEAs to support AP programs.
- (2)(a) The Superintendent shall determine funding to be awarded to an LEA's IB programs by:
- (i) dividing the number of students enrolled in an LEA's IB program by the total enrollment of students in IB programs throughout the state; and
 - (ii) multiplying the result from Subsection (2)(a)(i) by the total IB allocation.
- (b) The Superintendent shall determine 30% of the funding to be awarded for LEA AP programs by:
- (i) dividing the number of students enrolled in an LEA's AP classes by the total enrollment of students in AP classes throughout the state; and
 - (ii) multiplying the result from Subsection (2)(b)(i) by 30% of the total AP allocation.
- (c) The Superintendent shall determine 70% of the funding to be awarded for LEA AP programs by:
- (i) dividing the number of students in the LEA receiving a three or higher on an AP examination by the total number of students receiving a three or higher on an AP examination throughout the state; and
 - (ii) multiplying the result from Subsection (2)(c)(i) by 70% of the total AP allocation.
- (3) If an LEA fails to demonstrate progress in meeting plan goals for placing and retaining underrepresented students in accelerated programs, the Superintendent may:
- (a) place the LEA on probation and provide targeted technical assistance; and
 - (b) reduce funding to the LEA.
- (4) Subject to the general requirements of Section R277-700-7:
- (a) A middle school or high school:
 - (i) shall provide all course registration opportunities to each student; and
 - (ii) through consultation with students, parents, educators, and administrators, may consider academic readiness, but may not require prerequisites for enrolling in an AP or IB course.
 - (b) A school that offers a program eligible for funding under Section 53F-2-408, may not prohibit a student from enrolling in the course based on the student's:
 - (i) grades or grade point average;
 - (ii) state standardized assessment scores; or
 - (iii) referral or lack of a referral from an educator;
 - (c) In addition to the restrictions listed in Subsection (d), a middle school or high school may not prohibit a student from enrolling in a course based on the student's:
 - (i) grade level;
 - (ii) participation in or passing a pre-requisite course;
 - (iii) participation in or passing an honors-level or college-preparatory course; or
 - (iv) requirements over the summer.
- (5) An LEA may use Enhancement for Accelerated Students

Program funds for:

- (a) gifted and talented programs, including professional learning for teachers;
- (b) identification of underrepresented students;
- (c) Advanced Placement courses;
- (d) Advanced Placement test fees of eligible low-income students, as defined in Section 53F-2-408;
- (e) International Baccalaureate programs; or
- (f) International Baccalaureate test fees of eligible low-income students, as defined in Section 53F-2-408.

R277-707-5. Performance Criteria and Reports.

- (1) An LEA receiving funds shall submit an annual evaluation report to the Superintendent consistent with Section 53F-2-408.
- (2) An LEA shall present the evaluation report identified in Subsection (1) to the LEA's local board in a public meeting.
- (3) At a minimum, the report shall include the following performance criteria related to the identified students whose academic achievement is accelerated, which shall be disaggregated by groups as defined in the State Accountability System:
 - (a) number of elementary, middle school, and high school students participating in Gifted and Talented programs;
 - (b) number of AP classes taken, completed, and exams passed with a score of 2 or above;
 - (c) number of IB classes taken, completed, and exams passed with a score of 4 or above; and
 - (d) evidence of stakeholder input demonstrating that the LEA engaged parents;
- (4) As part of the LEA's annual report under Subsection (1), an LEA shall provide:
 - (a) an accounting of how the LEA's funds were disbursed to the teacher level; and
 - (b) evidence, disaggregated by subgroups, demonstrating that the LEA is:
 - (i) increasing student enrollment, in the LEA's accelerated academic courses, including underrepresented students; or
 - (ii) meeting goals in the LEA's plan to increase enrollment and retention, in the LEA's accelerated academic courses, including underrepresented students.

KEY: accelerated learning, enhancement programs

August 19, 2019

Notice of Continuation May 16, 2016

Art X Sec 3
53F-2-408
53E-3-401(4)

R277. Education, Administration.**R277-709. Education Programs Serving Youth in Custody.****R277-709-1. 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) Subsection 53E-3-401(4), 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 53E-3-503(2)(b) which requires the Board to adopt rules for the distribution of funds for the education of youth in custody.
- (2) The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in custody programs.

R277-709-2. Definitions.

- (1) "Accreditation" means the formal process for evaluation and approval from a regional accrediting body.
- (2) "Custody" means the status of being legally subject to the control of another person or a public agency.
- (3)(a) "Youth in custody" means a person for whom the Board is responsible to provide educational services under Subsections 53E-3-503(2)(a) and 62A-15-609(1).
- (b) "Youth in custody" does not include a person taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.

R277-709-3. Student Evaluation, Education Plans, and LEA Programs.

- (1) Each student meeting the eligibility definition of youth in custody shall have a written plan for college and career readiness defining the student's academic achievement, which shall specify known in-school and extra-school factors which may affect the student's school performance.
- (2) A student, school staff and parent/guardian shall annually review the student's plan for college and career readiness maintained in the student's file.
- (3) A program receiving a youth in custody student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation, which may include a special education eligibility evaluation, as quickly as possible so that unnecessary delay in developing a student's education program is avoided.
- (4) The LEA in which a youth in custody program is located has the responsibility to conduct IDEA child find activities within the program, consistent with Section R277-750-2 and Utah State Board of Education Special Education Rule II.A.
- (5)(a) A youth in custody program shall prepare an appropriate plan for college and career readiness and, as needed, an Individualized Education Program for each eligible youth in custody based upon the results of the student evaluation.
- (b) A youth in custody program shall review and update the plans required under Subsection (5)(a) at least once each year or immediately following transfer of a student from one custody program to another, whichever is sooner.
- (c) A youth in custody program shall develop the plans required under Subsection (5)(a) in cooperation with appropriate representatives of other service agencies working with a student, such as JJS, DCFS, DWS, etc.
- (d) The plans required under Subsection (5)(a) shall specify the responsibilities of each of the agencies towards the student and shall be signed by each agency's representative.
- (6)(a) All provisions of the IDEA and state special education rules apply to youth in custody programs.
- (b) The USBE Special Education Department shall include youth in custody programs in annual general supervision monitoring.
- (7)(a) An LEA shall provide an education program for the student which conforms as closely as possible to the student's

education plan.

- (b) An LEA shall provide educational services in the least restrictive environment appropriate for the student's behavior and educational performance.
- (8) An LEA shall consider youth in custody who do not require educational services or supervision beyond students not in custody to be part of the district's regular enrollment and provided education services.
- (9) An LEA shall only assign or allow youth in custody to remain in restrictive or mainstream programs if:
- (a) their custodial status;
 - (b) past behavior that does not put others at risk; or
 - (c) the inappropriate behavior of other students.
- (10)(a) Education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program.
- (b) The Superintendent shall monitor compliance in annual review visits.
- (11) An LEA shall accept credit earned in youth in custody programs that are accredited at face value in Utah's public schools consistent with Section R277-410-9, Transfer or Acceptance of Credit.
- (12) A youth in custody program shall coordinate educational services with non-custody programs to enable youth in custody to continue their education following discharge from custody.
- (13)(a) A youth in custody program shall admit youth in custody to classes within five school days following arrival at a new residential placement.
- (b) If a youth in custody program cannot complete an evaluation and plan for college and career readiness or IEP development within five school days, the program shall enroll the student temporarily based upon the best information available.
- (c) A temporary schedule may be modified to meet the student's needs after the evaluation and planning process is complete.
- (14)(a) Following a student's release from custody or transfer to a new program, the sending program shall bring all available school records up to date and forward them to the receiving program consistent with Section 53G-6-604.
- (b) An LEA shall maintain all grades, attendance records and special education SCRAM records in the LEA's SIS system in compliance with Rule R277-484, Data Standards.

R277-709-4. Program Fiscal and Accountability Procedures.

- (1) The Superintendent shall allocate state funds appropriated for youth in custody, including the Utah State Hospital, in accordance with Section 53E-3-503 and Section 62A-15-609.
- (2) Funds appropriated for youth in custody programs shall be subject to Board accounting, auditing, and budgeting rules and policies.
- (3) The Superintendent shall, through an annually submitted and approved state application and plan, contract with LEAs to provide educational services for youth in custody.
- (a) A contract required by Subsection (3) shall include the respective responsibilities of the Board, LEAs, and other local service providers for education.
- (b) An LEA may subcontract with local non-district educational service providers for the provision of educational services.
- (4) The Superintendent may only contract through an RFP process with an appropriate entity if the Superintendent determines that the LEA where the facility is located is unable or unwilling to provide adequate education services.
- (5) Youth in custody students receiving education services by or through an LEA are students of that LEA.
- (6) Notwithstanding the procedures for determining an alternative district of residency in Rule R277-621, an LEA may not create an alternative district of residency for a student who has been placed in custody primarily in an attempt to receive services in a

state funded youth in custody program.

(7) The Superintendent shall allocate state funds appropriated for youth in custody on the basis of an annually submitted and approved application made by the LEA where a youth in custody program resides.

(8) The Superintendent shall base the share of funds distributed to an LEA upon criteria, which include:

- (a) the number of youth in custody served by the LEA;
- (b) the type of program required for the youth;
- (c) the setting for providing services; and
- (d) the length of the program.

(9) A youth in custody program shall expend funds approved for youth in custody projects solely for the purposes described in the respective funding application.

(10) The Superintendent may retain no more than five percent of the total youth in custody annual legislative appropriation for administration, oversight, monitoring, and evaluation of youth in custody programs and their compliance with law and this rule.

(11) Up to three percent of the five percent of administrative funds allowed under Subsection (9) may be withheld by the Superintendent and directed to students attending youth in custody programs for short periods of time or to new or beginning youth in custody programs or initiatives benefitting youth in custody students.

(12) The Superintendent may withhold federal or state funds for noncompliance with state policy and procedures and associated reporting timelines in accordance with Rule R277-114.

(13) The Superintendent shall develop uniform forms, deadlines, reporting and accounting procedures and guidelines to govern the youth in custody school-based programs and Utah State Hospital funded programs.

R277-709-5. Youth in Custody Programs and Students with Disabilities.

(1) The youth in custody program is separate from and not conducted under the state's education program for students with disabilities.

(2) Custodial status alone does not qualify a youth in custody student as a student with a disability under laws regulating education for students with disabilities.

(3) Youth in custody students may be eligible for special education funding and services based upon special education rules and regulations.

(4) Youth in custody students qualifying for special education services shall receive educational instruction as defined in Rule R277-750, Education Programs for Students with Disabilities.

(5) Special education procedural safeguards shall apply to all IDEA eligible youth in custody students regardless of instructional location.

(6) The Superintendent shall monitor special education programs provided through youth in custody programs on an annual basis in accordance with special education rules and policies.

R277-709-6. Youth in Custody Program Staffing and Monitoring.

(1) Education staff assigned to youth in custody shall be qualified and appropriate for their assignments in accordance with Board licensing rules.

(2) Youth in custody programs shall maintain accreditation as part of the LEA where the programs are located consistent with Rule R277-410, Accreditation of Schools.

(3) The Superintendent shall evaluate youth in custody programs through regular site monitoring visits and monthly desk monitoring.

(4) Monitored programs shall prepare and submit to the Superintendent a written corrective action plan for each monitoring finding, as requested by the Superintendent.

(5) A youth in custody program's failure to resolve monitoring findings as soon as possible, and, in no case, later than one calendar

year from date of notice, may result in the termination of state funding as provided in Rule R277-114.

(6) The Superintendent may review LEA or State Hospital records and practices for compliance with the law and this rule.

R277-709-7. Youth in Custody/LEA Fiscal Procedures.

(1) Ten percent of state youth in custody funds or educational contract funds not expended in the current fiscal year may be carried over by eligible LEAs and spent in the next fiscal year with written approval of the Superintendent.

(2) An LEA shall submit a request to carry over funds for approval by August 1.

(3) If approved, an LEA shall detail carry over amounts in a revised budget submitted to the Superintendent no later than October 1 in the year requested.

(4) The Superintendent shall consider excess funds in determining the LEA's allocation for the next fiscal year.

(5)(a) The Superintendent shall annually recapture fund balances in excess of ten percent no later than February 1.

(b) The Superintendent shall reallocate funds recaptured in accordance with Subsection (5)(a) to the youth in custody programs based on the criteria and procedures provided by this rule.

R277-709-8. Program, Curriculum, Outcomes and Student Mastery.

(1) Youth in custody programs shall offer courses consistent with the Utah Core standards under Rule R277-700.

(2) A youth in custody program may modify or adjust Utah core standards and teaching strategies to meet the individual needs of youth in custody students.

(3) Youth in custody programs shall stress course content mastery rather than completion of predetermined seat time in a classroom.

(4) The Superintendent shall make available written course descriptions for GED Test preparation for youth in custody students who consider pursuing GED Tests as an alternative to traditional Carnegie diploma courses.

R277-709-9. Confidentiality.

(1) An LEA shall issue transcripts and diplomas prepared for youth in custody in the name of an existing LEA, which also serves non-custodial youth and shall not bear references to custodial status.

(2) School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records, but are nonetheless student records if retained by the LEA.

(3)(a) Members of the interagency team which design and oversee student education plans shall have access, through team member representatives of the participating agencies, to relevant records of the various agencies.

(b) The records and information obtained from the records remain the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, the student's legal guardian, or the eligible student, as defined under 20 U.S.C. 1232g(d).

(4) Youth in custody programs shall comply with all state and federal privacy requirements for student records.

R277-709-10. Coordinating Council.

(1)(a) The Department of Human Services and the Board shall appoint a coordinating council in accordance with Subsection 53E-3-503(6)(a) to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services.

(b) The coordinating council shall operate under guidelines developed and approved by the Department of Human Services and the Board.

(2) Coordinating council membership shall include a

representative of the following:

- (a) the Department of Human Services;
- (b) the Division of Substance Abuse and Mental Health;
- (c) the Division of Juvenile Justice Services;
- (d) the Division of Child and Family Services;
- (e) the Board;
- (f) the Administrative Office of the Courts;
- (g) school district superintendents; and
- (h) a Native American tribe.

R277-709-11. Advisory Councils.

(1)(a) Each LEA serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs.

(b) Members of council required under Subsection (1)(a) shall include, if applicable to the LEA, the following:

- (i) a representative of the Division of Child and Family Services;
- (ii) a representative of the Division of Juvenile Justice Services;
- (iii) directors of agencies located in an LEA such as detention centers, secure lockup facilities, observation and assessment units, and the Utah State Hospital;
- (iv) a representative of community-based alternative programs for custodial juveniles; and
- (v) a representative of the LEA.

(2) A local interagency advisory council required under Subsection (1)(a) shall:

- (a) adopt by-laws for its operation; and
- (b) meet at least quarterly.

KEY: students, education, juvenile courts
August 19, 2019
Notice of Continuation February 26, 2018

Art X Sec 3
53E-3-401(4)
53E-3-503(2)(b)

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) Subsection 53E-3-401(4), 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 53F-5-207(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 Subsection 35A-9-102(2).
- (3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day, including before school, after school, or summer programs.

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-\$200,000 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. Program Fees.

(1) Program fees charged by an LEA or school are subject to the provisions of R277-407.

(2) An LEA or school may impose a fee, including fees on a sliding scale, related to the LEA's program if the LEA or school complies with the provisions of R277-407, including:

(a) ensuring the program fee is approved by the LEA governing board before the LEA or school charges the fee;

(b) advertising or notifying parents and students of fee waiver eligibility and the process for a parent or student to obtain a fee waiver; and

(c) providing a student or parent an opportunity to appeal the LEA's denial of the student or parent's request for a fee waiver.

R277-710-6. Application Process.

(1) The Superintendent shall:

(a) create a scoring rubric to evaluate grant applications;

(b) solicit competitive grant applications from LEAs;

(c) review an LEA grant application according to the scoring rubric described in Subsection (1)(a); and

(d) award grant funds to LEAs based on the recommendations of a program grant application review panel.

(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 May 15; and

(b) the Superintendent shall notify grant recipients no later than July 1.

(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.

R277-710-7. 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 of funds;

(b) monitoring program implementation; and

(c) gathering and reporting required data.

(2) 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 53F-5-207(7).

(3) The annual report required under Subsection 53F-5-207(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 19, 2019**

Notice of Continuation June 21, 2019

**Art X Sec 3
53E-3-401(4)
53F-5-207**

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-1. Incorporation by Reference.**

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on January 2, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on June 6, 2018, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on January 2, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on June 24, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements

and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, PM10, PM2.5, ozone
August 15, 2019
Notice of Continuation January 27, 2017**

19-2-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material. This rule also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to these rules, that they may be individually subject to Director enforcement action for violation of Section R313-19-5.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-19-2. General.

(1) A person shall not manufacture, produce, receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees engaged in source material milling operations, authorized to possess byproduct material, as defined in Section R313-12-3 (see definition (b)) from source material milling operations, authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct material from other persons for disposal, or authorized to possess and dispose of byproduct material generated by source material milling operations are subject to the requirements of Rule R313-24. Licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25. Licensees using radioactive material in the healing arts are subject to the requirements of Rule R313-32. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34. Licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36. Licensees possessing category 1 or category 2 quantities of radioactive material, as defined in Section R313-37-3 (incorporating 10 CFR 37.5 by reference), are subject to the physical protection requirements of Rule R313-37. Licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38.

R313-19-5. Deliberate Misconduct.

(1) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the Director; or

(b) Deliberately submit to the Director, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or

inaccurate in some respect material to the Director.

(2) A person who violates Subsections R313-19-5(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-19-5(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the Director; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

R313-19-7. Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in Rules R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 and the requirements for a license set forth in Subsection 19-3-104(3) to the extent that they transport or store radioactive material in the regular course of carriage for another or storage incident thereto.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from the requirements in Rules R313-15, R313-18, R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware manufactured before October 16, 2017, provided that the glaze contains not more than 20 percent by weight source material;

(B) piezoelectric ceramic containing not more than two percent by weight source material; or

(C) glassware containing not more than two percent by weight source material or, for glassware manufactured before October 16, 2017, not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the

thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";

(B) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED";

(C) The requirements specified in Subsections R313-19-13(1)(c)(v)(A) and (B) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules in effect on June 30, 1969, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before October 16, 2017, 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(ix) No person may initially transfer for sale or distribution a product containing source material to persons exempt under Subsection R313-19-13(1)(c), or equivalent regulations of an Agreement State, unless authorized by a license issued under 10 CFR 40.52 to initially transfer such products for sale or distribution.

(A) A person initially distributing source material in products covered by the exemptions in this Subsection R313-19-13(1)(c) before (Utah effective date to be set by the Board), without specific authorization may continue such distribution for one year beyond this date. Initial distribution may also be continued until the director takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond this date.

(B) A person authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and a person who imports finished products or parts, for sale or distribution must be authorized by a license issued under 10 CFR 40.52 for distribution only and are exempt from the requirements of Rules R313-15 and R313-18 and Subsections R313-22-33(1)(a) and (b).

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined

within a device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to November 30, 2007.

(B)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(D) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(E) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(F) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave

receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(G) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains not more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains not more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(G), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt from the regulations in R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26

(2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a) of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in Rule R313-21 are effective without the filing of applications with the Director or the issuance of licensing documents to the particular persons, although the filing of a registration certificate with the Director may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Director and the issuance of a licensing document by the Director. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Director may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Director.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Director in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Director, obtain permission to proceed sooner. The Director may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in Subsection R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Director may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in Subsection R313-19-30(1) except by transfer to a person specifically licensed by the Director or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material.

(2) Notwithstanding the provisions of Subsection R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subsection R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Director within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission,

a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in Subsection R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Director may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or the environment.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2)(a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m

radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of each test that exceeds the permissible concentration listed in R313-32 (incorporating 10 CFR 35.204(a)) at the time of generator elution, in accordance with R313-32 (incorporating 10 CFR 35.204).

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10)(a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to Section R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of Subsections R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Director, if prior approval from the Director has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in Rule R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Director, an Agreement State or a Licensing State; or

- (e) as otherwise authorized by the Director in writing.
- (3) Before transferring radioactive material to a specific licensee of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.
- (4) The following methods for the verification required by Subsection R313-19-41(3) are acceptable:
- (a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;
- (b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;
- (c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;
- (d) the transferor may obtain other information compiled by a reporting service from official records of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or
- (e) when none of the methods of verification described in Subsection R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.
- (5) Shipment and transport of radioactive material shall be in accordance with the provisions of Section R313-19-100.

R313-19-50. Reporting Requirements.

- (1) Licensees shall notify the Director as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.
- (2) The following events involving licensed material require notification of the Director by the licensee within 24 hours:
- (a) an unplanned contamination event that:
- (i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;
- (ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2017), which is incorporated by reference, for the material; and
- (iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or
- (b) an event in which equipment is disabled or fails to function as designed when:
- (i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;
- (ii) the equipment is required by rule or license condition to be available and operable; and

- (iii) no redundant equipment is available and operable to perform the required safety function; or
- (c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or
- (d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:
- (i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2017), which is incorporated by reference, for the material; and
- (ii) the damage affects the integrity of the licensed material or its container.
- (3) Preparation and submission of reports. Reports made by licensees in response to the requirements of Section R313-19-50 must be made as follows:
- (a) For radioactive materials, other than special nuclear material, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:
- (i) the caller's name and call back telephone number;
- (ii) a description of the event, including date and time;
- (iii) the exact location of the event;
- (iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and
- (v) available personnel radiation exposure data.
- (b) For special nuclear materials, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:
- (i) the caller's name, position title, and call-back telephone number;
- (ii) the date, time, and exact location of the event; and
- (iii) a description of the event, including:
- (A) radiological or chemical hazards involved, including isotopes, quantities, and chemical and physical form of any material released; and
- (B) actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or hazardous chemicals produced from radioactive materials (e.g., level of radiation exposure, concentration of chemicals, and duration of exposure).
- (c) Written report for materials other than special nuclear materials. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:
- (i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;
- (ii) the exact location of the event;
- (iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;
- (iv) date and time of the event;
- (v) corrective actions taken or planned and results of evaluations or assessments; and
- (vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.
- (d) Written report for special nuclear material. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be

submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:

- (i) the complete applicable information required by Subsection R313-19-50(3)(b);
- (ii) the probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned; and
- (iii) corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Director.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Director to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Director.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Director may terminate a specific license upon written request submitted by the licensee to the Director.

R313-19-70. Exempt Concentrations of Radioactive Materials.
Refer to Subsection R313-19-13(2)(a)

		TABLE	
Element (Atomic Number)	Radionuclide	Column I	Column II
		Concentration Material Normally Used As Gas (uCi/ml)	Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4
Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4
	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4

Europium (63)	Er-171		1 E-3
	Eu-152		6 E-4
	(T = 9.2 h)		
Fluorine (9)	Eu-155		2 E-3
	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
	Ga-72		4 E-4
Gallium (31)	Ge-71		2 E-2
Germanium (32)	Au-196		2 E-3
Gold (79)	Au-198		5 E-4
	Au-199		2 E-3
	Hf-181		7 E-4
Hafnium (72)	H-3	5 E-6	3 E-2
Hydrogen (1)	In-113m		1 E-2
Indium (49)	In-114m		2 E-4
	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
Iodine (53)	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
	Ir-190		2 E-3
	Ir-192		4 E-4
Iridium (77)	Ir-194		3 E-4
	Fe-55		8 E-3
	Fe-59		6 E-4
Iron (26)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Krypton (36)	La-140		2 E-4
	Pb-203		4 E-3
Lanthanum (57)	Lu-177		1 E-3
Lead (82)	Mn-52		3 E-4
Lutetium (71)	Mn-54		1 E-3
	Mn-56		1 E-3
	Hg-197m		2 E-3
Manganese (25)	Hg-197		3 E-3
	Hg-203		2 E-4
	Mo-99		2 E-3
Mercury (80)	Nd-147		6 E-4
Molybdenum (42)	Nd-149		3 E-3
	Ni-65		1 E-3
Neodymium (60)	Nb-95		1 E-3
	Nb-97		9 E-3
Nickel (28)	Os-185		7 E-4
Niobium (Columbium) (41)	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Osmium (76)	Pd-103		3 E-3
	Pd-109		9 E-4
Palladium (46)	P-32		2 E-4
Phosphorus (15)	Pt-191		1 E-3
	Pt-193m		1 E-2
Platinum (78)	Pt-197m		1 E-2
	Pt-197		1 E-3
	K-42		3 E-3
	Pr-142		3 E-4
Potassium (19)	Pr-143		5 E-4
Praseodymium (59)	Pm-147		2 E-3
	Pm-149		4 E-3
Promethium (61)	Re-183		6 E-4
Rhenium (75)	Re-186		9 E-3
	Re-188		6 E-4
	Rh-103m		1 E-1
Rhodium (45)	Rh-105		1 E-3
	Rb-86		7 E-4
Rubidium (37)	Ru-97		4 E-4
Ruthenium (44)	Ru-103		8 E-4
	Ru-105		1 E-3
Samarium (62)	Ru-106		1 E-4
	Sm-153		8 E-4
	Sc-46		4 E-4
Scandium (21)	Sc-47		9 E-4
	Sc-48		3 E-4
	Se-75		3 E-3
Selenium (34)	Si-31		9 E-3
Silicon (14)	Ag-105		1 E-3
Silver (47)	Ag-110m		3 E-4
	Ag-111		4 E-4
	Na-24		2 E-3
Sodium (11)	Sr-85		1 E-4
Strontium (38)	Sr-89		1 E-4
	Sr-91		7 E-4
	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
	Ta-182		4 E-4
Tantalum (73)	Tc-96m		1 E-1
Technetium (43)	Tc-96		1 E-3
	Te-125m		2 E-3
Tellurium (52)	Te-127m		6 E-4

	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten	W-181		4 E-3
(Wolfram)(74)	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100

(1) In expressing the concentrations in Section R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of Subsection R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section R313-19-70 for the specific radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.
Refer to Subsection R313-19-13(2)(b)

TABLE	
RADIOACTIVE MATERIAL	MICROCURIES
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10

Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), 71.19(c), 71.20 through 71.23, 71.47, 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, 71.127 through 71.137, and Appendix A to Part 71 (2014) are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
 - (a) In 10 CFR 71.4 the following definitions:

- (i) "close reflection by water";
- (ii) "licensed material";
- (iii) "optimum interspersed hydrogenous moderation";
- (iv) "spent nuclear fuel or spent fuel"; and
- (v) "state."
- (2) The substitution of the following date reference:
 - (a) "October 1, 2011" for "October 1, 2008".
- (3) The substitution of the following rule references:
 - (a) "R313-36 (incorporating 10 CFR 34.31(b) by reference)" for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);
 - (b) "R313-15-502" for reference to "10 CFR 20.1502";
 - (c) "R313-14" for reference to "10 CFR Part 2 Subpart B";
 - (d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";
 - (e) "R313-15-906(5)" for reference to "10 CFR 20.1906(e)";
 - (f) "R313-19-100(5)" for "Sec.71.5";
 - (g) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H" except in 10 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b);
 - (h) "10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.17(c)(2), 71.20(c)(2), 71.21(d)(2), 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subparts A, G, and H of this part";
 - (i) "10 CFR 71.47" for "subparts E and F of this part"; and
 - (j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "Sec. 71.101 through 71.137."
- (4) The substitution of the following terms:
 - (a) "Director" for:
 - (i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.20(a), 71.21(a), 71.22(a), 71.23(a), and 71.101(c)(1);
 - (ii) "Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" in 10 CFR 71.97(c)(1), and 71.97(f)(1);
 - (iii) "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001" in 10 CFR 71.97(c)(3)(iii);
 - (iv) "NRC" in 10 CFR 71.101(f);
 - (b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;
 - (c) "The Governor of Utah" for:
 - (i) "the governor of a State" in 71.97(a);
 - (ii) "each appropriate governor" in 10 CFR 71.97(c)(1);
 - (iii) "the governor" in 10 CFR 71.97(c)(3);
 - (iv) "the governor of the state" in 10 CFR 71.97(e);
 - (v) "the governor of each state" in 10 CFR 71.97(f)(1);
 - (vi) "a governor" in 10 CFR 71.97(e);
 - (d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);
 - (e) "the Governor of Utah's" for:
 - (i) "the governor's" in 10 CFR 71.97(a), 71.97(c)(3), 71.97(c)(3)(iii), 71.97(e), and 71.97(f)(1);
 - (ii) "governor's" in 10 CFR 71.97(c)(1), and 71.97(e);
 - (f) "Specific or general" for "NRC" in 10 CFR 71.0(c);
 - (g) "The Director at the address specified in R313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);
 - (h) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);
 - (i) "The material must be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);
 - (j) "Licensee" for "licensee, certificate holder, and applicant

for a COC"; and

(k) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2009), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A (49 CFR 173.1 through 49 CFR 173.13), B (49 CFR 173.21 through 49 CFR 173.40), and I (49 CFR 173.401 through 49 CFR 173.477).

(B) Marking and labeling--49 CFR part 172: subpart D (49 CFR 172.300 through 49 CFR 172.338); and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F (49 CFR 172.500 through 49 CFR 172.560), especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C (49 CFR 172.200 through 49 CFR 172.205) and G (49 CFR 172.600 through 49 CFR 172.606).

(F) Hazardous material employee training--49 CFR part 172: subpart H (49 CFR 172.700 through 49 CFR 172.704).

(G) Security plans--49 CFR part 172: subpart I (49 CFR 172.800 through 49 CFR 172.804).

(H) Hazardous material shipper/carrier registration--49 CFR part 107: subpart G (49 CFR 107.600 through 49 CFR 107.606).

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D (49 CFR 174.1 through 49 CFR 174.86) and K (49 CFR 174.700 through 49 CFR 174.750).

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F (49 CFR 176.1 through 49 CFR 176.99) and M (49 CFR 176.700 through 49 CFR 107.720).

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, P.O. Box 144850, Salt Lake City, Utah 84114-4850.

KEY: licenses, reciprocity, transportation, exemptions

August 9, 2019

Notice of Continuation July 1, 2016

19-3-104

19-6-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-22. Specific Licenses.

R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2017), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a

license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in 10 CFR 32.210(c) (January 1, 2015).

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c) (January 1, 2015), the application must include:

(A) All available information identified in 10 CFR 32.210(c) (January 1, 2015) concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although

recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Director determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50, R313-22-54, and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Director determines will significantly affect the quality of the environment, the Director, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with

any appropriate conditions to protect environmental values. The Director shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Director will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Director deems appropriate or necessary.

(a) Specific licenses for a new license application shall have an expiration date five years from the end of the month in which it is issued.

(b) Specific licenses for a renewed license shall expire ten years after the expiration date of the previous version of the license.

(c) Notwithstanding R313-22-34(1)(b), if during the review of the license renewal application, the Director determines issues that need to be reassessed sooner than the ten year renewal interval, the Director may shorten the renewal interval on a case by case basis. Examples of issues that may result in a shortened renewal interval includes new technologies, new company management, poor regulatory compliance, or other situations that would warrant increased attention.

(2) The Director may incorporate in licenses at the time of issuance, or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as the Director deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R , as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall

either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

(g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit

a decommissioning funding plan to the Director as a part of the license application.

(h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

(i) Documents provided to the Director under Subsection R313-22-35(3)(h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10 ⁴ but less than or equal to 10 ⁵ times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10 ⁵ is greater than one but R divided by 10 ⁴ is less than or equal to one:	\$1,125,000
Greater than 10 ³ but less than or equal to 10 ⁴ times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10 ⁴ is greater than one but R divided by 10 ³ is less than or equal to one:	\$225,000
Greater than 10 ¹⁰ but less than or equal to 10 ¹² times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10 ¹⁰ is greater than one, but R divided by 10 ¹² is less than or equal to one:	\$113,000

(5)(a) Each decommissioning funding plan shall be submitted for review and approval and shall contain-

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically

over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6) (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(b) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an

appropriate state or federal government agency or 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, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for

decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(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;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(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 current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its 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;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(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 current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. 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 parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and 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 licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance

as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or 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.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest

fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Director makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Director expires at the end of the day on the date of the Director's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Director.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Director notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Director in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection

R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Director.

(6) The Director may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Director has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Director and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Director may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Director determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by

the Director if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Director may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Director determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Director may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DWMRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microrentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed-- for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Director determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Director that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Director and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Director Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Director will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management

review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Director, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material

in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Director under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-54. Requirements for a Specific License to Initially Transfer Source Material for Use Under Section R313-21-21.

(1) An application for a specific license to initially transfer source material for use under Section R313-21-21, or 10 CFR 40.22 for a non-Agreement State, or equivalent regulations of an Agreement State, will be approved if:

(a) The applicant satisfies the general requirements specified in Section R313-22-33; and

(b) The applicant submits adequate information on, and the Director approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

R313-22-55. Conditions of Specific Licenses to Initially Transfer Source Material for Use Under Section R313-21-21.

(1)(a) Each person licensed under Section R313-22-54 shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(b) Each person licensed under Section R313-22-54 shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(c) Each person licensed under Section R313-22-54 shall provide the information specified in Subsections R313-22-55(1)(c)(i) and (c)(ii) to each person to whom source material is transferred for use under Section R313-21-21 or 10 CFR 40.22 for non-Agreement States or equivalent provisions in Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(i) A copy of Sections R313-21-21 and R313-19-41, or relevant equivalent regulations of the Agreement State.

(ii) Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(d) Each person licensed under Section R313-22-54 shall report transfers as follows:

(i) File a report with the Director. The report shall include the following information:

(A) The name, address, and license number of the person who transferred the source material;

(B) For each general licensee under Section R313-21-21 or 10 CFR 40.22 for non-Agreement States or equivalent Agreement State provisions to whom greater than 50 grams (0.11 pounds) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name or position or both and phone number, of the general licensee to whom the material was

sent; and the type, physical form, and quantity of source material transferred; and

(C) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(ii) File a report with:

(A) Each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to 10 CFR 40.22 (2016), to whom greater than 50 grams (0.11 pounds) of source material has been transferred within a single calendar quarter; or

(B) The U.S. Nuclear Regulatory Commission for non-Agreement States, that identifies all persons, operating under 10 CFR 40.22 (2016), to whom greater than 50 grams (0.11 pounds) of source material has been transferred within a single calendar quarter.

(C) The report shall include the following information specific to those transfers made to the Agreement State being reported to:

(I) The name, address, and license number of the person who transferred the source material; and

(II) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred.

(III) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State or non-Agreement State.

(iii) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under Section R313-21-21 or 10 CFR 40.22, or equivalent Agreement State provisions during the current period, a report shall be submitted to the Director indicating so. If no transfers have been made to general licensees in a particular Agreement State or non-Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency or the U.S. Nuclear Regulatory Commission upon request of the agency or Commission.

(e) Each person licensed under Section R313-22-54 shall maintain all information that supports the reports required by Section R313-22-55 concerning each transfer to a general licensee for a period of one year after the event is included in a report to the Director.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; gonads; or lens of eye	active blood-forming organs; 150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of a Licensing State. This

label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;
- (iii) method of sealing containment;
- (iv) containment construction materials;
- (v) form of contained radioactive material;
- (vi) maximum temperature withstood during prototype tests;
- (vii) maximum pressure withstood during prototype tests;
- (viii) maximum quantity of contained radioactive material;
- (ix) radiotoxicity of contained radioactive material; and
- (x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the

intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing

address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report

must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel

(ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration

(FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or
(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant commits to the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) A licensee shall satisfy the labeling requirements in R313-22-75(9)(a)(iv).

(e) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be

included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

- (i) primary containment or source capsule,
- (ii) protection of primary containment,
- (iii) method of sealing containment,
- (iv) containment construction materials,
- (v) form of contained radioactive material,
- (vi) maximum temperature withstood during prototype tests,
- (vii) maximum pressure withstood during prototype tests,
- (viii) maximum quantity of contained radioactive material,
- (ix) radiotoxicity of contained radioactive material, and
- (x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(7) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(7);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(7). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(7) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(7),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within

a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01	50,000
	Non CO	
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Radium-226	.001	100

Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I CURIES	COLUMN II CURIES
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1

Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1

Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-201. Serialization of Nationally Tracked Sources.

Each licensee who manufactures a nationally tracked source after October 19, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210 (2015) or equivalent regulations of an Agreement State.

R313-22-211. Inactivation of Certificates of Registration of Sealed Sources and Devices.

Licensees who no longer manufacture or initially transfer any of the sealed sources or devices covered by a particular certificate issued in accordance with the requirements of R313-22-210 shall request inactivation of the registration certificate in accordance with

10 CFR 32.211 (2015) or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive materials

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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-32. Medical Use of Radioactive Material.

R313-32-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of Rule R313-32 are in addition to, and not in substitution for, other sections of Title R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-32-2. Clarifications or Exceptions.

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through 35.3204 (2019) are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
 - (a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source";
 - (b) In 10 CFR 35.19, exclude "or the common defense and security";
 - (c) In 10 CFR 35.3067, exclude ", with a copy to the Director, Office of Nuclear Material Safety and Safeguards";
 - (d) In 10 CFR 35.3045(d), 10 CFR 3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b), exclude "By an appropriate method listed in Sec. 30.6(a) of this chapter,".
- (2) The substitution of the following date references:
 - (a) "May 13, 2005" for "October 24, 2002"; and
 - (b) "December 31, 2019" for "January 14, 2019";
- (3) The substitution of the following rule references:
 - (a) "Rules R313-32 and R313-15" for reference to "this part and 10 CFR Part 20" in 10 CFR 35.61(a);
 - (b) "Rule R313-15 for reference to "Part 20 of this chapter" in 10 CFR 35.70(a) and 10 CFR 35.80(a)(4);
 - (c) "Rules R313-19 and R313-22" for reference to "Part 30 of this chapter" in 10 CFR 35.18(a)(4);
 - (d) "Rules R313-19 and R313-22 or equivalent Nuclear Regulatory Commission or Agreement State requirements for reference to "10 CFR Part 30 or the equivalent requirements of an Agreement State" in 10 CFR 35.49(c);
 - (e) "10 CFR Part 30" for reference to "Part 30 of this chapter" as found in 10 CFR 35.65(a)(4);
 - (f) "Rules R313-15, R313-19, and R313-22" for reference to "parts 20 and 30 of this chapter" as found in 10 CFR 35.63(e)(1);
 - (g) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" as found in 10 CFR 35.14(c);
 - (h) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter" as found in 10 CFR 35.24(a);
 - (i) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter" as found in 10 CFR 35.310(a)(2)(i) and 10 CFR 35.410(a)(4)(i);
 - (j) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter" as found in 10 CFR 35.310(a)(2)(ii) and 10 CFR 35.410(a)(4)(ii);
 - (k) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter" as found in 10 CFR 35.652(a);
 - (l) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter" as found in 10 CFR 35.27(a)(1), 10 CFR 35.27(b)(1), 10 CFR 35.310, and 10 CFR 35.410;
 - (m) "Rules R313-19, R313-22 and Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State requirements" for reference to "10 CFR Part 30 and Sec. 32.74 of this chapter or equivalent requirements of an Agreement State" as found in 10 CFR 35.49(a);
 - (n) "Subsection R313-22-75(10) or equivalent Nuclear

Regulatory Commission or Agreement State requirements" for references to "Sec. 32.74 of this chapter or equivalent Agreement State regulations" found in 10 CFR 35.65(a)(1) and 10 CFR 35.65(a)(2);

- (o) "Rule R313-70" for reference to "Part 170 of this chapter";
 - (p) "Subsection R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter" as found in 10 CFR 35.14(b)(4);
 - (q) "Section R313-22-50" for reference to "Part 33 of this chapter" in 10 CFR 35.15;
 - (r) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter" in 10 CFR 35.12(e);
 - (s) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)" in 10 CFR 35.2 for the definition of Authorized Nuclear Pharmacist;
 - (t) "Subsection R313-22-75(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 32.72 of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3)(i), 10 CFR 35.100(a)(1), 10 CFR 35.200(a)(1), and 10 CFR 35.300(a)(1); and
 - (u) "Subsection R313-22-32(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 30.32(j) of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(iii), 10 CFR 35.63(c)(3)(ii), 10 CFR 35.100(a)(2), 10 CFR 35.200(a)(2), or 10 CFR 35.300(a)(2).
- (4) The substitution of the following terms:
- (a) "radioactive material" for reference to "byproduct material";
 - (b) "a Director, a Nuclear Regulatory Commission, or Agreement State" for reference to "an NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), or 10 CFR 35.300(c);
 - (c) "Director is (801) 536-0200 or after hours, (801) 536-4123" for "NRC Operations Center is (301) 816-5100" as found in the footnote included for 10 CFR 35.3045(c);
 - (d) "Form DWMRC-01, 'Application for Radioactive Material License'" for reference to "NRC Form 313, 'Application for Material License'" as found in 10 CFR 35.12(b)(1), 10 CFR 35.12(c)(1)(i) and 10 CFR 35.18(a)(1);
 - (e) "Form DWMRC-01" for reference to "NRC Form 313" as found in 10 CFR 35.12(c)(1)(ii);
 - (f) "medical use license issued by the Director" for reference to "NRC medical use license" in 10 CFR 35.6(c);
 - (g) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(i), Authorized Nuclear Pharmacist (2)(iii) and Radiation Safety Officer (2)(i), in 10 CFR 35.57(b)(1) (first instance), 10 CFR 35.57(b)(2) (first instance), 10 CFR 35.433(a)(2)(i); or for references to "Commission or an Agreement State" in 10 CFR 35.2 for the definitions of Associate Radiation Safety Officer (2)(i) and Ophthalmic Physicist (2)(i), 10 CFR 35.11(a), in 10 CFR 35.50(a), 10 CFR 35.50(a)(2)(ii)(A), 10 CFR 35.50(c)(1), 10 CFR 35.51(a), 10 CFR 35.51(a)(2)(i), 10 CFR 35.55(a), 10 CFR 35.190(a), 10 CFR 35.290(a), 10 CFR 35.390(a), 10 CFR 35.392(a), 10 CFR 35.394(a), 10 CFR 35.396(a)(3), 10 CFR 35.433(a)(2)(i), 10 CFR 35.490(a), 10 CFR 35.590(a), 10 CFR 35.605(a), 110 CFR 35.605(b), 10 CFR 35.605(c), 10 CFR 35.655(b) and 10 CFR 35.690(a);
 - (h) "Director, a U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(iii), Authorized Nuclear Pharmacist (2)(i), Authorized User (2)(i), Authorized User (2)(iii) and Ophthalmic Physicist (2)(ii), in 10 CFR 13(b)(4)(ii), 10 CFR 35.14(a)(2)(second instance), 10 CFR 35.57(a)(1)(second instance), 10 CFR 35.57(b)(1)(second instance), 10 CFR 35.57(b)(2)(second instance), 10 CFR 35.433(a)(2)(ii)(second instance); or for references to "Commission

or an Agreement State" in 10 CFR 35.50(c)(2)(second instance);

(i) "license issued by the Director, the Nuclear Regulatory Commission, or the Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.14(a)(2)(first instance);

(j) "Director" for reference to "NRC Operations Center" in 10 CFR 35.3045(c), 10 CFR 35.3047(c), and 10 CFR 35.3204(a);

(k) "license issued by the Director, the Nuclear Regulatory Commission or an Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.14(a)(2)(first instance), 10 CFR 35.50(b)(1)(ii) or for reference to "Commission or an Agreement State license" in 10 CFR 35.50(b)(1)(ii), 10 CFR 35.50(c)(2), and 10 CFR 35.57(a)(2);

(l) "Director at the address specified in Section R313-12-110" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter" in 10 CFR 35.3045(d), 10 CFR 35.3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b);

(m) "Board" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;

(n) "Director" for reference to "Commission" in 10 CFR 35.12(d)(4), 10 CFR 35.14(a), 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

(o) "Director" for reference to "NRC" in 10 CFR 35.3045(g)(1), 10 CFR 35.3047(f)(1), and 10 CFR 35.3204(a)(second instance);

(p) "Nuclear Regulatory Commission" for reference to "Commission" in 10 CFR 35.67(b)(2);

(q) "Director" for reference to "NRC" in 10 CFR 35.3045(g)(1), 10 CFR 35.3047(f)(1), and 10 CFR 35.35.3204(a)(second instance); and

(r) "the Director" for reference to "NRC" in 10 CFR 35.13(b)(4)(i);

(s) "licenses issued by the Director" for reference to "NRC licenses" in 10 CFR 35.57(c);

(t) "Director, the Nuclear Regulatory Commission, or an Agreement State" for reference to "NRC" in 10 CFR 35.13(b)(5), 10 CFR 35.14(a)(2), 10 CFR 35.57(b)(3), and 10 CFR 35.57(a)(4);

(u) "(c)" for reference to "(b)" in 10 CFR 35.92.

(5) The addition of the following to 10 CFR 35.92:

(b) The Director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:

(1) Requests an amendment to the licensee's radioactive materials license for the approval;

(2) Can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and

(3) Commits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed."

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine

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19-3-104

19-6-107

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-268. Land Disposal Restrictions.

R315-268-1. Land Disposal Restrictions – Purpose, Scope, and Applicability.

(a) Rule R315-268 identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in Rule R315-268 or Rule R315-261, the requirements of Rule R315-268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) Where persons have been granted an extension to the effective date of a prohibition under Sections R315-268-20 through 39 or pursuant to Section R315-268-5, with respect to those wastes covered by the extension;

(2) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, or 40 CFR 148, are not prohibited if the wastes:

(i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and

(ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Sections R315-261-20 through 24, at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Section R315-268-40, or are D003 reactive cyanide:

(i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or

(ii) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

(iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in Subsection R315-268-37(a); and

(iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal, i.e., placement in a surface impoundment.

(d) The requirements of Rule R315-268 shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Rule R315-268:

(1) Waste generated by very small quantity generators, as defined in Section R315-260-10;

(2) Waste pesticides that a farmer disposes of pursuant to Section R315-262-70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards;

(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses 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; and relief device discharges; discharges from safety showers and

rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one percent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, are exempt from Sections R315-268-7 and 268-50 for the hazardous wastes listed below. These handlers are subject to regulation under 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; and

(4) Lamps as described in Section R315-273-5.

R315-268-2. Land Disposal Restrictions – Definitions Applicable in Rule R315-268.

When used in Rule R315-268 the following terms have the meanings given below:

(a) Halogenated organic compounds or HOCs means those compounds having a carbon-halogen bond which are listed under appendix III to Rule R315-268.

(b) Hazardous constituent or constituents means those constituents listed in appendix VIII to Rule R315-261.

(c) Land disposal means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

(d) Nonwastewaters are wastes that do not meet the criteria for wastewaters in Subsection R315-268-2(f).

(e) Polychlorinated biphenyls or PCBs are halogenated organic compounds defined in accordance with 40 CFR 761.3.

(f) Wastewaters are wastes that contain less than 1% by weight total organic carbon (TOC) and less than 1% by weight total suspended solids (TSS).

(g) Debris means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in Sections R315-268-40 through 49, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section R315-268-45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(h) Hazardous debris means debris that contains a hazardous waste listed in Sections R315-261-30 through 35, or that exhibits a characteristic of hazardous waste identified in Sections R315-261-20 through 24. Any deliberate mixing of prohibited hazardous waste with debris that changes its treatment classification, i.e., from waste to hazardous debris, is not allowed under the dilution prohibition in Section R315-268-3.

(i) Underlying hazardous constituent means any constituent listed in Section R315-268-48, Table UTS-Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste at a concentration above the constituent-specific UTS treatment standards.

(j) Inorganic metal-bearing waste is one for which EPA has established treatment standards for metal hazardous constituents,

and which does not otherwise contain significant organic or cyanide content as described in Subsection R315-268-3(c)(1), and is specifically listed in appendix XI of Rule R315-268.

(k) Soil means unconsolidated earth material composing the superficial geologic strata, material overlying bedrock, consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification, i.e., from waste to contaminated soil, is not allowed under the dilution prohibition in Section R315-268-3.

R315-268-3. Land Disposal Restrictions – Dilution Prohibited As a Substitute for Treatment.

(a) Except as provided in Subsection R315-268-3(b), no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with Sections R315-268-40 through 49, to circumvent the effective date of a prohibition in Sections R315-268-20 through 39, or to otherwise avoid a prohibition in Sections R315-268-20 through 39, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

(b) Dilution of wastes that are hazardous only because they exhibit a characteristic in treatment systems which include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA), or which treat wastes in a CWA-equivalent treatment system, or which treat wastes for the purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of Section R315-268-3 unless a method other than DEACT has been specified in Section R315-268-40 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

(c) Combustion of the hazardous waste codes listed in Appendix XI of Rule R315-268 is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria, unless otherwise specifically prohibited from combustion:

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in Section R315-268-48;

(2) The waste consists of organic, debris-like materials, e.g., wood, paper, plastic, or cloth, contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics, including biological agents; or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

(d) It is a form of impermissible dilution, and therefore prohibited, to add iron filings or other metallic forms of iron to lead-containing hazardous wastes in order to achieve any land disposal restriction treatment standard for lead. Lead-containing wastes include D008 wastes, wastes exhibiting a characteristic due to the presence of lead, all characteristic wastes containing lead as an underlying hazardous constituent, listed wastes containing lead as a regulated constituent, and hazardous media containing any of the aforementioned lead-containing wastes.

R315-268-4. Land Disposal Restrictions – Treatment Surface Impoundment Exemption.

(a) Wastes which are otherwise prohibited from land disposal

under Rule R315-268 may be treated in a surface impoundment or series of impoundments provided that:

(1) Treatment of such wastes occurs in the impoundments;

(2) The following conditions are met:

(i) Sampling and testing. For wastes with treatment standards in Sections R315-268-40 through 49 and/or prohibition levels in Sections R315-268-20 through 39 or RCRA section 3004(d), the residues from treatment are analyzed, as specified in Sections R315-268-7 or 268-32, to determine if they meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under Section R315-264-13 or 40 CFR 265.13, which is adopted by reference, shall be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

(ii) Removal. The following treatment residues, including any liquid waste, shall be removed at least annually; residues which do not meet the treatment standards promulgated under Sections R315-268-40 through 49; residues which do not meet the prohibition levels established under Sections R315-268-20 through 39 or imposed by statute, where no treatment standards have been established; residues which are from the treatment of wastes prohibited from land disposal under Sections R315-268-20 through 39, where no treatment standards have been established and no prohibition levels apply; or residues from managing listed wastes which are not delisted under Section R315-260-22. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

(iii) Subsequent management. Treatment residues may not be placed in any other surface impoundment for subsequent management.

(iv) Recordkeeping. Sampling and testing and recordkeeping provisions of Section R315-264-13 and 40 CFR 265.13, which is adopted by reference, apply.

(3) The impoundment meets the design requirements of Section R315-264-221(c) or 40 CFR 265.221(a), which is adopted by reference, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of Sections R315-264-90 through 101 or 40 CFR 265.90 through 94, which are adopted by reference, unless:

(i) Exempted pursuant to Sections R315-264-221 (d) or (e), or to 40 CFR 265.221(c) or (d), which are adopted by reference; or,

(ii) Upon application by the owner or operator, the Director, after notice and an opportunity to comment, has granted a waiver of the requirements on the basis that the surface impoundment:

(A) Has at least one liner, for which there is no evidence that such liner is leaking;

(B) Is located more than one-quarter mile from an underground source of drinking water; and

(C) Is in compliance with generally applicable ground water monitoring requirements for facilities with permits; or,

(iii) Upon application by the owner or operator, the Director, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment 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.

(4) The owner or operator submits to the Director a written certification that the requirements of Section R315-268-4(a)(3) have been met. The following certification is required:

I certify under penalty of law that the requirements of Section R315-268-4(a)(3) have been met for all surface impoundments being used to treat restricted wastes. 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.

(b) Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under Section R315-268-4.

R315-268-5. Land Disposal Restrictions – Procedures for Case-by-Case Extensions to an Effective Date.

Note to Sections R315-268-5. All references to administrative positions and to regulations are to the positions and regulations of the US Environmental Protection Agency. Utah does not administer Section R315-268-5.

(a) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Administrator for an extension to the effective date of any applicable restriction established under Sections R315-268-20 through 39. The applicant shall demonstrate the following:

(1) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under Sections R315-268-20 through 39;

(2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in Sections R315-268-40 through 49 or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

(3) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date;

(4) The capacity being constructed or otherwise provided by the applicant shall be sufficient to manage the entire quantity of waste that is the subject of the application;

(5) He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available;

(6) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and

(7) Any waste managed in a surface impoundment or landfill during the extension period shall meet the requirements of Subsection R315-268-5(h)(2).

(b) An authorized representative signing an application described under Subsection R315-268-5(a) shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the 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.

(c) After receiving an application for an extension, the Administrator may request any additional information which he deems as necessary to evaluate the application.

(d) An extension shall apply only to the waste generated at the individual facility covered by the application and shall not apply to restricted waste from any other facility.

(e) On the basis of the information referred to in Subsection R315-268-5(a), after notice and opportunity for comment, and after consultation with appropriate State agencies in all affected States, the Administrator may grant an extension of up to 1 year from the effective date. The Administrator may renew this extension for up to 1 additional year upon the request of the applicant if the demonstration required in Subsection R315-268-5 (a) can still be made. In no event shall an extension extend beyond 24 months from the applicable effective date specified in Sections R315-268-20 through 39. The length of any extension authorized shall be

determined by the Administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in Subsection R315-268-5(a)(5). The Administrator shall give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Federal Register.

(f) Any person granted an extension under Section R315-268-5 shall immediately notify the Administrator as soon as he has knowledge of any change in the conditions certified to in the application.

(g) Any person granted an extension Section R315-268-5 shall submit written progress reports at intervals designated by the Administrator. Such reports shall describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; shall identify any event which may cause or has caused a delay in the development of the capacity; and shall summarize the steps taken to mitigate the delay. The Administrator can revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the Agency denies or revokes any required permit, if conditions certified in the application change, or for any violation of Rules R315-260 through 266, 268, 270, 273, 124,15, and 101.

(h) Whenever the Administrator establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(1) The storage restrictions under Subsection R315-268-50(a) do not apply; and

(2) Such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical requirements of the following provisions regardless of whether such unit is existing, new, or a replacement or lateral expansion.

(i) The landfill, if in interim status, is in compliance with the requirements of subpart F of 40 CFR 265 and 40 CFR 265.301(a), (c), and (d) that is adopted by reference in Rule R315-265; or,

(ii) The landfill, if permitted, is in compliance with the requirements of Sections R315-264-90 through 101 and Subsections R315-264-301(c), (d) and (e); or

(iii) The surface impoundment, if in interim status, is in compliance with the requirements of subpart F of 40 CFR 265, 40 CFR 265.221(a),(c), and (d) that are adopted by reference in Rule R315-265, and RCRA section 3005(j)(1); or

(iv) The surface impoundment, if permitted, is in compliance with the requirements of Sections R315-264-90 through 101 and Subsections R315-264-221(c), (d) and (e); or

(v) The surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of subpart F of 40 CFR 265 that is adopted by reference in Rule R315-265 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of 40 CFR 265.221(a), (c) and (d) that is adopted by reference in Rule R315-265 within 48 months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of subpart F of 40 CFR 265 that is adopted by reference in Rule R315-265 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of 40 CFR 265.221(a), (c) and (d) that is adopted by reference in Rule R315-265 within 48 months after the promulgation of additional listings or characteristics of hazardous waste; or

(vi) The landfill, if disposing of containerized liquid hazardous wastes containing PCBs at concentrations greater than or

equal to 50 ppm but less than 500 ppm, is also in compliance with the requirements of 40 CFR 761.75 and Rules R264 and 265.

(i) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under Rule R315-268 once the effective date for the waste has been reached.

R315-268-6. Land Disposal Restrictions – Petitions to Allow Land Disposal of a Waste Prohibited Under Sections R315-268-20 through 39.

Note to Section R315-268-6. All references to administrative positions and to regulations are to the positions and regulations of the US Environmental Protection Agency. Utah does not administer Section R315-268-6.

(a) Any person seeking an exemption from a prohibition under Sections R315-268-20 through 39 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration shall include the following components:

- (1) An identification of the specific waste and the specific unit for which the demonstration will be made;
- (2) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;
- (3) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality.
- (4) A monitoring plan that detects migration at the earliest practicable time;
- (5) Sufficient information to assure the Administrator that the owner or operator of a land disposal unit receiving restricted waste(s) shall comply with other applicable Federal, State, and local laws.

(b) The demonstration referred to in Subsection R315-268-6(a) shall meet the following criteria:

- (1) All waste and environmental sampling, test, and analysis data shall be accurate and reproducible to the extent that state-of-the-art techniques allow;
- (2) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters shall have been approved by the Administrator;
- (3) Simulation models shall be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;
- (4) A quality assurance and quality control plan that addresses all aspects of the demonstration shall be approved by the Administrator; and,
- (5) An analysis shall be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis shall include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(c) Each petition referred to in Subsection R315-268-6(a) shall include the following:

(1) A monitoring plan that describes the monitoring program installed at and/or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan shall provide information on the monitoring of the unit and/or the environment around the unit. The following specific information shall be included in the plan:

- (i) The media monitored in the cases where monitoring of the environment around the unit is required;
- (ii) The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;
- (iii) The location of the monitoring stations;
- (iv) The monitoring interval (frequency of monitoring at each station);
- (v) The specific hazardous constituents to be monitored;

- (vi) The implementation schedule for the monitoring program;
- (vii) The equipment used at the monitoring stations;
- (viii) The sampling and analytical techniques employed; and
- (ix) The data recording/reporting procedures.

(2) Where applicable, the monitoring program described in Subsection R315-268-6(c)(1) shall be in place for a period of time specified by the Administrator, as part of his approval of the petition, prior to receipt of prohibited waste at the unit.

(3) The monitoring data collected according to the monitoring plan specified under Subsection R315-268-6(c)(1) shall be sent to the Administrator according to a format and schedule specified and approved in the monitoring plan, and

(4) A copy of the monitoring data collected under the monitoring plan specified under Subsection R315-268-6(c)(1) shall be kept on-site at the facility in the operating record.

(5) The monitoring program specified under Subsection R315-268-6(c)(1) meets the following criteria:

(i) All sampling, testing, and analytical data shall be approved by the Administrator and shall provide data that is accurate and reproducible.

(ii) All estimation and monitoring techniques shall be approved by the Administrator.

(iii) A quality assurance and quality control plan addressing all aspects of the monitoring program shall be provided to and approved by the Administrator.

(d) Each petition shall be submitted to the Administrator.

(e) After a petition has been approved, the owner or operator shall report any changes in conditions at the unit and/or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(1) If the owner or operator plans to make changes to the unit design, construction, or operation, such a change shall be proposed, in writing, and the owner or operator shall submit a demonstration to the Administrator at least 30 days prior to making the change. The Administrator shall determine whether the proposed change invalidates the terms of the petition and shall determine the appropriate response. Any change shall be approved by the Administrator prior to being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change shall be reported, in writing, to the Administrator within 10 days of discovering the change. The Administrator shall determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

(f) If the owner or operator determines that there is migration of hazardous constituent(s) from the unit, the owner or operator shall:

(1) Immediately suspend receipt of prohibited waste at the unit, and

(2) Notify the Administrator, in writing, within 10 days of the determination that a release has occurred.

(3) Following receipt of the notification the Administrator shall determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of Rules R315-264 or 265.

(g) Each petition shall include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that 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.

(h) After receiving a petition, the Administrator may request any additional information that reasonably may be required to evaluate the demonstration.

(i) If approved, the petition shall apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and shall not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(j) The Administrator shall give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Federal Register.

(k) The term of a petition granted under Section R315-268-6 shall be no longer than the term of the hazardous waste permit if the disposal unit is operating under a hazardous waste permit, or up to a maximum of 10 years from the date of approval provided under Subsection R315-268-6(g) if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a hazardous waste permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(l) Prior to the Administrator's decision, the applicant is required to comply with all restrictions on land disposal under Rule R315-268 once the effective date for the waste has been reached.

(m) The petition granted by the Administrator does not relieve the petitioner of his responsibilities in the management of hazardous waste under Rules R315-260 through part 270.

(n) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under Section R315-268-6.

R315-268-7. Land Disposal Restrictions – Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and Disposal Facilities.

(a) Requirements for generators:

(1) A generator of hazardous waste shall determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in Sections R315-268-40, 45, or 49. This determination can be made concurrently with the hazardous waste determination required in Section R315-262-11, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference, see Section R315-260-11, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. Alternatively, the generator shall send the waste to a hazardous waste treatment facility permitted under Section 19-6-108, where the waste treatment facility shall comply with the requirements of Section R315-264-13 and Subsection R315-268-7(b). In addition, some hazardous wastes shall be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in Section R315-268-40, and are described in detail in Section R315-268-42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested, however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested. If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they shall comply with the special requirements of Section R315-268-9 in addition to any applicable requirements in Section R315-268-7.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the

determination of whether his waste shall be treated, with the initial shipment of waste to each treatment or storage facility, the generator shall send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice shall include the information in column "268-7(a)(2)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4). Alternatively, if the generator chooses not to make the determination of whether the waste shall be treated, the notification shall include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and shall state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility shall make the determination." No further notification is necessary until such time that the waste or facility change, in which case a new notification shall be sent and a copy placed in the generator's file.

(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator shall send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice shall include the information indicated in column "268-7(a)(3)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Sections R315-268-40 through 49. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator shall send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice shall include the information in column "268-7(a)(3)" of the Generator Paperwork Requirements Table in Subsection R315-268-7(a)(4).

(iii) If the waste changes, the generator shall send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under Subsection R315-261-3(f) are not subject to these requirements.

(4) For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under Section R315-268-5, disposal in a non-migration unit under Section R315-268-6, or a national capacity variance or case-by-case capacity variance under Sections R315-268-20 through 39. If a generator's waste is so exempt, then with the initial shipment of waste, the generator shall send a one-time written notice to each land disposal facility receiving the waste. The notice shall include the information indicated in column "268-7(a)(4)" of the Generator Paperwork Requirements Table below. If the waste changes, the generator shall send a new notice to the receiving facility, and place a copy in their files.

TABLE 1

Required information	Generator Paperwork Requirements			
	268-7 (a) (2)	268-7 (a) (3)	268-7 (a) (4)	268-7 (a) (9)
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	X	X	X	X
2. Statement: this waste is not prohibited from land			X	

disposal			
3. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice	X	X	
4. The notice shall include the applicable wastewater/nonwastewater category (see Section R315-268-2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)	X	X	
5. Waste analysis data, when available	X	X	X
6. Date the waste is subject to the prohibition			X
7. For hazardous debris, when treating with the alternative treatment technologies provided by Section R315-268-45: the contaminants subject to treatment, as described in Section R315-268-45(b); and an indication that these contaminants are being treated to comply with Section R315-268-45	X		X
8. For contaminated soil subject to LDRs as provided in Section R315-268-49(a), the constituents subject to treatment as described in Section R315-268-49(d), and the following statement: This contaminated soil, does/does not, contain listed hazardous waste and, does/does not, exhibit a characteristic of hazardous waste and, is subject to/complies with, the soil treatment standards as provided by Section R315-268-49(c) or the universal treatment standards	X	X	
9. A certification is needed, see applicable section for exact wording		X	X

(5) If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under Sections R315-262-15, 16, and 17 to meet applicable LDR treatment standards found at Section R315-268-40, the generator shall develop and follow a written waste analysis plan which describes the procedures it will carry out to comply with the treatment standards. Generators treating hazardous debris under the alternative treatment standards of Table 1 to Section R315-268-45, however, are not subject to these waste analysis requirements. The plan must be kept on site in the generator's records, and the following requirements must be met:

- (i) The waste analysis plan shall be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of Rule R315-268, including the selected testing frequency.
- (ii) Such plan shall be kept in the facility's on-site files and made available to inspectors.
- (iii) Wastes shipped off-site pursuant to Subsection R315-268-7(a) shall comply with the notification requirements of Subsection R315-268-7(a)(3).

(6) If a generator determines that the waste or contaminated soil is restricted based solely on his knowledge of the waste, all supporting data used to make this determination shall be retained on-site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using

the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as referenced in Section R315-260-11, and all waste analysis data shall be retained on-site in the generator's files.

(7) If a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from regulation under Sections R315-261-2 through 6 subsequent to the point of generation, including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified at Subsection R315-261-4(a)(2) or that are CWA-equivalent, or are managed in an underground injection well regulated by the SDWA, he shall place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from regulation under Sections R315-261-2 through 6, and the disposition of the waste, in the facility's on-site files.

(8) Generators shall retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to Section R315-268-7 for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director. The requirements of Subsection R315-268-7(a) apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under Sections R315-261-2 through 6, or exempted from hazardous waste regulation, subsequent to the point of generation.

(9) If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at Subsection R315-268-42(c):

(i) With the initial shipment of waste to a treatment facility, the generator shall submit a notice that provides the information in column "268-7(a)(9)" in the Generator Paperwork Requirements Table of Subsection R315-268-7(a)(4), and the following certification. The certification, which shall be signed by an authorized representative and shall be placed in the generator's files, shall say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to Rule R315-268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at Subsection R315-268-42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(ii) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification shall be sent and a copy placed in the generator's file.

(iii) If the lab pack contains characteristic hazardous wastes, D001-D043 excluding D009, underlying hazardous constituents, as defined in Subsection R315-268-2(i) need not be determined.

(iv) The generator shall also comply with the requirements in Subsections R315-268-7(a)(6) and (a)(7).

(10) Small quantity generators with tolling agreements pursuant to Subsection R315-262-20(e) shall comply with the applicable notification and certification requirements of Subsection R315-268-7(a) for the initial shipment of the waste subject to the agreement. Such generators shall retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(b) Treatment facilities shall test their wastes according to the

frequency specified in their waste analysis plans as required by Section R315-264-13, for permitted TSDs, or 40 CFR 265.13, which is adopted by reference, for interim status facilities. Such testing shall be performed as provided in Subsections R315-268-7(b)(1), (b)(2) and (b)(3).

(1) For wastes or contaminated soil with treatment standards expressed in the waste extract (TCLP), the owner or operator of the treatment facility shall test an extract of the treatment residues, using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in Section R315-260-11, to assure that the treatment residues extract meet the applicable treatment standards.

(2) For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility shall test the treatment residues, not an extract of such residues, to assure that they meet the applicable treatment standards.

(3) A one-time notice shall be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice shall be placed in the treatment facility's file.

(i) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice shall be sent and a copy placed in the treatment facility's file.

(ii) The one-time notice shall include these requirements:

TABLE 2

Treatment Facility Paperwork Requirements

Required information	268-7(b)
1. EPA Hazardous Waste Numbers and Manifest	X
Number of first shipment	
2. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	X
3. The notice shall include the applicable wastewater/ nonwastewater category, see Subsections R315-268-2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria, such as D003 reactive cyanide	X
4. Waste analysis data, when available	X
5. For contaminated soil subject to LDRs as provided in Subsection R315-268-49(a), the constituents subject to treatment as described in Subsection R315-268-49(d) and the following statement, "this contaminated soil, does/does not, exhibit a characteristic of hazardous waste and, is subject to/complies with, the soil treatment standards as provided by Subsection R315-268-49(c)".	X
6. A certification is needed, see applicable section for exact wording	X

(4) The treatment facility shall submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in Section R315-268-40 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the

treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in Section R315-268-49 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(i) A copy of the certification shall be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification shall be sent to the receiving facility, and a copy placed in the file.

(ii) Debris excluded from the definition of hazardous waste under Subsection R315-261-3(f), i.e., debris treated by an extraction or destruction technology provided by Table 1, Section R315-268-45, and debris that the Director has determined does not contain hazardous waste, however, is subject to the notification and certification requirements of Subsection R315-268-7(d) rather than the certification requirements of Subsection R315-268-7(b).

(iii) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in Subsection R315-268-40(d), the certification, signed by an authorized representative, shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in Section R315-268-42, Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(iv) For characteristic wastes that are subject to the treatment standards in Section R315-268-40, other than those expressed as a method of treatment, or Section R315-268-49, and that contain underlying hazardous constituents as defined in Subsection R315-268-2(i); if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section R315-268-40 or 49 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(v) For characteristic wastes that contain underlying hazardous constituents as defined Subsection R315-268-2(i) that are treated on-site to remove the hazardous characteristic to treat underlying hazardous constituents to levels in Section R315-268-48 Universal Treatment Standards, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section R315-268-40 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in Subsection R315-268-2(i) have been treated on-site to meet the Section R315-268-48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(5) If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste or treatment residue off-site shall comply with the notice and certification requirements applicable to generators under Section R315-268-7.

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of Subsection R315-266-20(b) regarding treatment standards and prohibition levels, the

owner or operator of a treatment facility, i.e., the recycler, shall, for the initial shipment of waste, prepare a one-time certification described in Subsection R315-268-7(b)(4), and a one-time notice which includes the information in Subsection R315-268-7(b)(3), except the manifest number. The certification and notification shall be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification shall be prepared and placed in the on-site files. In addition, the recycling facility shall also keep records of the name and location of each entity receiving the hazardous waste-derived product.

(c) Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to Subsection R315-266-20(b), the owner or operator of any land disposal facility disposing any waste subject to restrictions under Rule R315-268 shall:

(1) Have copies of the notice and certifications specified in Subsection R315-268-7(a) or (b).

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in Section R315-260-11, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Sections R315-268-40 through 49. Such testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by Section R315-264-13 or 40 CFR 265.13, which is adopted by reference.

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under Subsection R315-261-3(f), i.e., debris treated by an extraction or destruction technology provided by Table 1, Section R315-268-45, and debris that the Director has determined does not contain hazardous waste, are subject to the following notification and certification requirements:

(1) A one-time notification, including the following information, shall be submitted to the Director:

(i) The name and address of the Subtitle D facility receiving the treated debris;

(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under Subsection R315-261-3(f)(1), the technology from Table 1, Section R315-268-45, used to treat the debris.

(2) The notification shall be updated if the debris is shipped to a different facility, and, for debris excluded under Subsection R315-261-2(f)(1), if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under Subsection R315-261-3(f)(1), the owner or operator of the treatment facility shall document and certify compliance with the treatment standards of Table 1, Section R315-268-45, as follows:

(i) Records shall be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(ii) Records shall be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(iii) For each shipment of treated debris, a certification of compliance with the treatment standards shall be signed by an authorized representative and placed in the facility's files. The certification shall state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of Section R315-268-45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

(e) Generators and treaters who first receive from the Director a determination that a given contaminated soil subject to LDRs as

provided in Subsection R315-268-49(a) no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to LDRs as provided in Subsection R315-268-49(a) no longer exhibits a characteristic of hazardous waste shall:

(1) Prepare a one-time only documentation of these determinations including all supporting information; and,

(2) Maintain that information in the facility files and other records for a minimum of three years.

R315-268-9. Land Disposal Restrictions – Special Rules Regarding Wastes That Exhibit a Characteristic.

(a) The initial generator of a solid waste shall determine each EPA Hazardous Waste Number, waste code, applicable to the waste in order to determine the applicable treatment standards under Sections R315-268-40 through 49. This determination may be made concurrently with the hazardous waste determination required in Section R315-262-11. For purposes of Rule R315-268, the waste shall carry the waste code for any applicable listed waste Sections R315-261-30 through 35. In addition, where the waste exhibits a characteristic, the waste shall carry one or more of the characteristic waste codes Sections R315-261-20 through 24, except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in Subsection R315-268-9(b). If the generator determines that their waste displays a hazardous characteristic, and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of Section R315-268-42, Table 1, the generator shall determine the underlying hazardous constituents, as defined at Subsection R315-268-2(i), in the characteristic waste.

(b) Where a prohibited waste is both listed under Sections R315-261-30 through 35 and exhibits a characteristic under Sections R315-261-20 through 24, the treatment standard for the waste code listed in Sections R315-261-30 through 35 shall operate in lieu of the standard for the waste code under Sections R315-261-20 through 24, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste shall meet the treatment standards for all applicable listed and characteristic waste codes.

(c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under Sections R315-261-20 through 24 may be land disposed unless the waste complies with the treatment standards under Sections R315-268-40 through 49.

(d) Wastes that exhibit a characteristic are also subject to Section R315-268-7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification shall be placed in the generator's or treater's on-site files. The notification and certification shall be updated if the process or operation generating the waste changes and/or if the non-hazardous waste facility receiving the waste changes.

(1) The notification shall include the following information:

(i) Name and address of the non-hazardous waste facility receiving the waste shipment; and

(ii) A description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents, as defined in Subsection R315-268-2(i), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

(2) The certification shall be signed by an authorized representative and shall state the language found in Subsection R315-268-7(b)(4).

(i) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in Subsection R315-268-7(b)(4)(iv) applies.

R315-268-13. Land Disposal Restrictions – Schedule for Wastes Identified or Listed After November 8, 1984.

In the case of any hazardous waste identified or listed under section 3001 after November 8, 1984, the Administrator shall make a land disposal prohibition determination within 6 months after the date of identification or listing.

R315-268-14. Land Disposal Restrictions – Surface Impoundment Exemptions.

(a) Section R315-268-14 defines additional circumstances under which an otherwise prohibited waste may continue to be placed in a surface impoundment.

(b) Wastes which are newly identified or listed under RCRA section 3001 after November 8, 1984, and stored in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be stored in the surface impoundment for 48 months after the promulgation of the additional listing or characteristic, notwithstanding that the waste is otherwise prohibited from land disposal, provided that the surface impoundment is in compliance with the requirements of 40 CFR 265.90 through 94, which are adopted by reference, within 12 months after promulgation of the new listing or characteristic.

(c) Wastes which are newly identified or listed under RCRA section 3001 after November 8, 1984, and treated in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be treated in that surface impoundment, notwithstanding that the waste is otherwise prohibited from land disposal, provided that surface impoundment is in compliance with the requirements of 40 CFR 265.90 through 94, which are adopted by reference, within 12 months after the promulgation of the new listing or characteristic. In addition, if the surface impoundment continues to treat hazardous waste after 48 months from promulgation of the additional listing or characteristic, it shall then be in compliance with Section R315-268-4.

R315-268-20. Land Disposal Restrictions – Waste Specific Prohibitions – Dyes and/or Pigments Production Wastes.

(a) Effective August 23, 2005, the waste specified in Rule R315-261 as EPA Hazardous Waste Number K181, and soil and debris contaminated with this waste, radioactive wastes mixed with this waste, and soil and debris contaminated with radioactive wastes mixed with this waste are prohibited from land disposal.

(b) The requirements of Subsection R315-268-20(a) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Hazardous debris has met the treatment standards in Section R315-268-40 or the alternative treatment standards in Section R315-268-45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in Section R315-268-20 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable Sections R315-268-40 through 49 levels, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-30. Land Disposal Restrictions – Waste Specific Prohibitions – Wood Preserving Wastes.

(a) Effective August 11, 1997, the following wastes are prohibited from land disposal: the wastes specified in Rule R315-261 as EPA Hazardous Waste numbers F032, F034, and F035.

(b) Effective May 12, 1999, the following wastes are prohibited from land disposal: soil and debris contaminated with F032, F034, F035; and radioactive wastes mixed with EPA Hazardous waste numbers F032, F034, and F035.

(c) Between May 12, 1997 and May 12, 1999, soil and debris contaminated with F032, F034, F035; and radioactive waste mixed with F032, F034, and F035 may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in Subsection R315-268-5(h)(2).

(d) The requirements of Subsections R315-268-30(a) and (b) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under Section R315-268-44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to those wastes covered by the extension.

(e) To determine whether a hazardous waste identified in Section R315-268-30 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of Section R315-268-48, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-31. Land Disposal Restrictions – Waste Specific Prohibitions-Dioxin-Containing Wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in Section R315-261-31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the following condition applies:

(1) The F020-F023 and F026-F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under subtitle C of the Resource Conservation and Recovery Act (RCRA).

(b) Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes listed in Subsection R315-268-31(a)(1) are prohibited from land disposal.

(c) Between November 8, 1988, and November 8, 1990, wastes included in Subsection R315-268-31(a)(1) may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in Subsection R315-268-5(h)(2) and all other applicable requirements of Rules R315-264 and 265.

(d) The requirements of Subsections R315-268-31(a) and (b) do not apply if:

(1) The wastes meet the standards of Sections R315-268-40 through 49; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect

to those wastes covered by the extension.

R315-268-32. Land Disposal Restrictions – Waste Specific Prohibitions – Soils Exhibiting the Toxicity Characteristic for Metals and Containing Pcb's.

(a) Effective December 26, 2000, the following wastes are prohibited from land disposal: any volumes of soil exhibiting the toxicity characteristic solely because of the presence of metals (D004--D011) and containing PCBs.

(b) The requirements of Subsection R315-268-32(a) do not apply if:

(1)(i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the treatment standards specified in Sections R315-268-40 through 49 for EPA hazardous waste numbers D004-D011, as applicable; or

(2)(i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the alternative treatment standards specified in Section R315-268-49 for contaminated soil; or

(3) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition; or

(4) The wastes meet applicable alternative treatment standards established pursuant to a petition granted under Section R315-268-44.

R315-268-33. Land Disposal Restrictions Waste Specific Prohibitions – Chlorinated Aliphatic Wastes.

(a) Effective May 8, 2001, the wastes specified in Rule R315-261 as EPA Hazardous Wastes Numbers K174, and K175, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of Subsection R315-268-33(a) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Hazardous debris has met the treatment standards in Section R315-268-40 or the alternative treatment standards in Section R315-268-45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in Sections R315-268-33 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable levels of Sections R315-268-40 through 49, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

(d) Disposal of K175 wastes that have complied with all applicable Section R315-268-40 treatment standards shall also be macroencapsulated in accordance with Section R315-268-45 Table 1 unless the waste is placed in:

(1) A hazardous waste monofill containing only K175 wastes that meet all applicable Section R315-268-40 treatment standards; or

(2) A dedicated hazardous waste landfill cell in which all other wastes being co-disposed are at pH less than or equal to 6.0.

R315-268-34. Land Disposal Restrictions – Waste Specific Prohibitions-Toxicity Characteristic Metal Wastes.

(a) Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in Rule R315-261 as EPA Hazardous Waste numbers D004-D011 that are newly identified, i.e. wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure, and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications at Rule R315-261.

(b) Effective November 26, 1998, the following waste is prohibited from land disposal: Slag from secondary lead smelting which exhibits the Toxicity Characteristic due to the presence of one or more metals.

(c) Effective May 26, 2000, the following wastes are prohibited from land disposal: newly identified characteristic wastes from elemental phosphorus processing; radioactive wastes mixed with EPA Hazardous wastes D004-D011 that are newly identified, i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure; or mixed with newly identified characteristic mineral processing wastes, soil, or debris.

(d) Between May 26, 1998 and May 26, 2000, newly identified characteristic wastes from elemental phosphorus processing, radioactive waste mixed with D004-D011 wastes that are newly identified, i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure, or mixed with newly identified characteristic mineral processing wastes, soil, or debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in Subsection R315-268-5(h).

(e) The requirements of Subsection R315-268-34(a) and (b) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under Section R315-268-44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(f) To determine whether a hazardous waste identified in Section R315-268-34 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentration in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents, including underlying hazardous constituents in characteristic wastes, in excess of the applicable Universal Treatment Standard levels of Section R315-268-48, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-35. Land Disposal Restrictions – Waste Specific Prohibitions – Petroleum Refining Wastes.

(a) Effective February 8, 1999, the wastes specified in Rule R315-261 as EPA Hazardous Wastes Numbers K169, K170, K171, and K172, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

(b) The requirements of Subsection R315-268-35(a) do not apply if:

(1) The wastes meet the applicable treatment standards

specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Hazardous debris that have met treatment standards in Section R315-268-40 or in the alternative treatment standards in Section R315-268-45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in Section R315-268-35 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of Section R315-268-48, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-36. Land Disposal Restrictions – Waste Specific Prohibitions-Inorganic Chemical Wastes.

(a) Effective May 20, 2002, the wastes specified in Rule R315-261 as EPA Hazardous Wastes Numbers K176, K177, and K178, and soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of Subsection R315-268-36(a) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Hazardous debris has met the treatment standards in Section R315-268-40 or the alternative treatment standards in Section R315-268-45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in Section R315-268-36 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable Sections R315-268-40 through 49 levels, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-37. Land Disposal Restrictions – Waste Specific Prohibitions – Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.

(a) Effective August 9, 1993, the wastes specified in Section R315-261-21 as D001, and is not in the High TOC Ignitable Liquids Subcategory, and specified in Section R315-261-22 as D002, that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA),

or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies.

(b) Effective February 10, 1994, the wastes specified in Section R315-261-21 as D001, and is not in the High TOC Ignitable Liquids Subcategory, and specified in Section R315-261-22 as D002, that are managed in systems defined in 40 CFR 144.6(e) and 146.6(e) as Class V injection wells, that do not engage in CWA-equivalent treatment before injection, are prohibited from land disposal.

R315-268-38. Land Disposal Restrictions – Waste Specific Prohibitions-Newly Identified Organic Toxicity Characteristic Wastes and Newly Listed Coke By-Product and Chlorotoluene Production Wastes.

(a) Effective December 19, 1994, the wastes specified in Section R315-261-32 as EPA Hazardous Waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal. In addition, debris contaminated with EPA Hazardous Waste numbers F037, F038, K107-K112, K117, K118, K123-K126, K131, K132, K136, U328, U353, U359, and soil and debris contaminated with D012-D043, K141-K145, and K147-K151 are prohibited from land disposal. The following wastes that are specified in Section R315-261-24, Table 1 as EPA Hazardous Waste numbers: D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, D043 that are not radioactive, or that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that do not engage in CWA-equivalent treatment before ultimate land disposal, or that are injected in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/ sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or better than these technologies.

(b) On September 19, 1996, radioactive wastes that are mixed with D018-D043 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/ sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies. Radioactive wastes mixed with K141-K145, and K147-K151 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between December 19, 1994 and September 19, 1996, the wastes included in Subsection R315-268-38(b) may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in Subsection R315-268-5(h)(2).

(d) The requirements of Subsections R315-268-38(a), (b), and (c) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in Section R315-268-38 exceeds the applicable treatment standards specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Sections R315-268-40 through 49, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-39. Land Disposal Restrictions – Waste Specific Prohibitions – Spent Aluminum Potliners; Reactive; and Carbamate Wastes.

(a) On July 8, 1996, the wastes specified in Section R315-261-32 as EPA Hazardous Waste numbers K156-K159, and K161; and in Section R315-261-33 as EPA Hazardous Waste numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409-U411 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(b) On July 8, 1996, the wastes identified in Section R315-261-23 as D003 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. This prohibition does not apply to unexploded ordnance and other explosive devices which have been the subject of an emergency response. Such D003 wastes are prohibited unless they meet the treatment standard of DEACT before land disposal, see Section R315-268-40.

(c) On September 21, 1998, the wastes specified in Section R315-261-32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(d) On April 8, 1998, radioactive wastes mixed with K088, K156-K159, K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409-U411 are prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(e) Between July 8, 1996, and April 8, 1998, the wastes included in Subsections R315-268-39(a), (c), and (d) may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in Subsection R315-268-5(h)(2).

(f) The requirements of Subsections R315-268-39(a), (b), (c), and (d) do not apply if:

(1) The wastes meet the applicable treatment standards specified in Sections R315-268-40 through 49;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under Section R315-268-44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to Section R315-268-5, with respect to these wastes covered by the extension.

(g) To determine whether a hazardous waste identified in Section R315-268-39 exceeds the applicable treatment standards

specified in Section R315-268-40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Sections R315-268-40 through 49, the waste is prohibited from land disposal, and all requirements of Rule R315-268 are applicable, except as otherwise specified.

R315-268-40. Land Disposal Restrictions – Applicability of Treatment Standards.

(a) A prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements:

(1) All hazardous constituents in the waste or in the treatment residue shall be at or below the values found in the table for that waste ("total waste standards"); or

(2) The hazardous constituents in the extract of the waste or in the extract of the treatment residue shall be at or below the values found in the table ("waste extract standards"); or

(3) The waste shall be treated using the technology specified in the table ("technology standard"), which are described in detail in Section R315-268-42, Table 1-Technology Codes and Description of Technology-Based Standards.

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11, shall be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310B, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in Section R315-268-42(b).

(c) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue shall meet the lowest treatment standard for the constituent of concern.

(d) Notwithstanding the prohibitions specified in Subsection R315-268-40(a), treatment and disposal facilities may demonstrate, and certify pursuant to Subsection R315-268-7(b)(5), compliance with the treatment standards for organic constituents specified by a footnote in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of Section R315-264-340 through 351, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in Subsection R315-268-40(d)(1) to treat the organic constituents; and

(3) The treatment or disposal facility may demonstrate compliance with organic constituents if good-faith analytical efforts achieve detection limits for the regulated organic constituents that do not exceed the treatment standards specified in Section R315-268-40 by an order of magnitude.

(e) For characteristic wastes (D001-D043) that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," and are not managed in a wastewater treatment

system that is regulated under the Clean Water Act (CWA), that is CWA-equivalent, or that is injected into a Class I nonhazardous deep injection well, all underlying hazardous constituents, as defined in Section R315-268-2(i), shall meet Universal Treatment Standards, found in Section R315-268-48, Table Universal Treatment Standards, prior to land disposal as defined in Subsection R315-268-2(c).

(f) The treatment standards for F001-F005 nonwastewater constituents carbon disulfide, cyclohexanone, and/or methanol apply to wastes which contain only one, two, or three of these constituents. Compliance is measured for these constituents in the waste extract from test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in Section R315-260-11. If the waste contains any of these three constituents along with any of the other 25 constituents found in F001-F005, then compliance with treatment standards for carbon disulfide, cyclohexanone, and/or methanol are not required.

(g) Between August 26, 1996 and March 4, 1999 the treatment standards for the wastes specified in Section R315-261-32 as EPA Hazardous Waste numbers K156-K161; and in Section R315-261-33 as EPA Hazardous Waste numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411; and soil contaminated with these wastes; may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at Section R315-268-42 Table 1, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at Section R315-268-42 Table 1, for wastewaters.

(h) Prohibited D004-D011 mixed radioactive wastes and mixed radioactive listed wastes containing metal constituents, that were previously treated by stabilization to the treatment standards in effect at that time and then put into storage, do not have to be re-treated to meet treatment standards in Section R315-268-40 prior to land disposal.

(i) Reserved

(j) Effective September 4, 1998, the treatment standards for the wastes specified in Section R315-261-33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at Section R315-268-42 Table 1, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at Section R315-268-42 Table 1, for wastewaters.

Table Treatment Standards for Hazardous Wastes and the Footnotes To Treatment Standards Standard Table in 40 CFR 268.40, 2015 edition, are adopted and incorporated by reference.

R315-268-41. Land Disposal Restrictions – Treatment Standards Expressed as Concentrations in Waste Extract.

For the requirements previously found in Section R315-268-41 and for treatment standards in Table CCWE-Constituent Concentrations in Waste Extracts, refer to Section R315-268-40.

R315-268-42. Land Disposal Restrictions – Treatment Standards Expressed as Specified Technologies.

Note: For the requirements previously found in Section R315-

268-42 in Table 2-Technology-Based Standards By RCRA Waste Code, and Table 3-Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste, refer to Section R315-268-40.

(a) The following wastes in the table in R315-268-40 "Treatment Standards for Hazardous Wastes," for which standards are expressed as a treatment method rather than a concentration level, shall be treated using the technology or technologies specified in the table entitled "Technology Codes and Description of Technology-Based Standards" in Section R315-268-42.

Table 1

Technology Codes and Description of Technology-Based Standards

Technology code	Description of technology-based standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (i.e., solid or liquid)---venting can be accomplished through physical release utilizing valves/piping; physical penetration of the container; and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or non-metallic inorganics (i.e., degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals, e.g., Total Organic Carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues.
CARBN:	Carbon adsorption, granulated or powdered, of non-metallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough, e.g., Total Organic Carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues. Breakthrough occurs when the carbon has become saturated with the constituent, or indicator parameter, and substantial change in adsorption rate associated with that constituent occurs.
CHOXD:	Chemical or electrolytic oxidation utilizing the following oxidation reagents, or waste reagents, or combinations of reagents: (1) Hypochlorite, e.g., bleach; (2) chlorine; (3) chlorine dioxide; (4) ozone or UV, ultraviolet light, assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals, e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues. Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED:	Chemical reduction utilizing the following reducing reagents, or waste reagents, or combinations of reagents: (1) Sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols, e.g., NaPEG and KPEG; (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals, e.g., Total Organic Halogens can often be used as an indicator parameter for the reduction of many halogenated organic

	constituents that cannot be directly analyzed in wastewater residues. Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.	RCGAS:	Recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
CMBST:	High temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of Sections R315-264-340 through 351, 40 CFR 265.340 through 352, which are adopted by reference, or Sections R315-266-100 through 112, and in other units operated in accordance with applicable technical operating requirements; and certain non-combustive technologies, such as the Catalytic Extraction Process.	RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) Distillation, i.e., thermal concentration; (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid-Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration, including ultrafiltration, and centrifugation, when used in conjunction with the above listed recovery technologies.
DEACT:	Deactivation to remove the hazardous characteristics of a waste due to its ignitability, corrosivity, and/or reactivity.	RLEAD:	Thermal recovery of lead in secondary lead smelters.
FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.	RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit, or facility, shall be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations, within meaning of section 302 of the Clean Air Act, for mercury. All wastewater and nonwastewater residues derived from this process shall then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories, e.g., High or Low Mercury Subcategories.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.	RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) Ion exchange; (2) resin or solid, i.e., zeolites, adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystallization; (6) ultrafiltration and/or (7) simple precipitation, i.e., crystallization,- Note: This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration, including ultrafiltration, and centrifugation, when used in conjunction with the above listed recovery technologies.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of Sections R315-264-340 through 351 and 40 CFR 265.340 through 352, which are adopted by reference. All wastewater and nonwastewater residues derived from this process shall then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories, e.g., High or Low Mercury Subcategories.	RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystallization, including freeze crystallization; or (8) chemical phase separation techniques, i.e., addition of acids, bases, demulsifiers, or similar chemicals;-Note: his does not preclude the use of other physical phase separation techniques such as a decantation, filtration, including ultrafiltration, and centrifugation, when used in conjunction with the above listed recovery technologies.
INCIN:	Incineration in units operated in accordance with the technical operating requirements of Sections R315-264-340 through 351 and 40 CFR 265.340 through 352, which are adopted by reference.	RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units identified as industrial furnaces according to Subsections R315-260-10(1), (6), (7), (11), and (12) under the definition of "industrial furnaces".
LLEXT:	Liquid-liquid extraction, often referred to as solvent extraction, of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that shall undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate, extracted liquid waste, proportionately low in organics that shall undergo further treatment as specified in the standard.	RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics, e.g., resins and plastics, or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to Section R315-260-10.	STABL:	Stabilization with the following reagents, or waste reagents, or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans, e.g., fly ash and cement kiln dust, -this does not preclude the addition of reagents, e.g., iron salts, silicates, and clays, designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
NEUTR:	Neutralization with the following reagents, or waste reagents, or combinations of reagents: (1) Acids; (2) bases; or (3) water, including wastewaters, resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.	SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the
NLDBR:	No land disposal based on recycling.		
POLYM:	Formation of complex high-molecular weight solids through polymerization of monomers in high-TOC D001 non-wastewaters which are chemical components in the manufacture of plastics.		
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, fluorides, or phosphates. The following reagents, or waste reagents, are typically used alone or in combination: (1) Lime, i.e., containing oxides and/or hydroxides of calcium and/or magnesium; (2) caustic, i.e., sodium and/or potassium hydroxides; (3) soda ash, i.e., sodium carbonate; (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.		
RBERY:	Thermal recovery of Beryllium.		

	unit, such as the number of separation stages and the internal column design, thus, resulting in a condensed extract high in organics that shall undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that shall undergo further treatment as specified in the standard.
VTD:	Vacuum thermal desorption of low-level radioactive hazardous mixed waste in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals, e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues.
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies, i.e., a treatment train, is specified as a single treatment standard, the order of application is specified in Section R315-268-42, Table 2 by indicating the five letter technology code that shall be applied first, then the designation "fb.," an abbreviation for "followed by," then the five letter technology code for the technology that shall be applied next, and so on.

Note 2: When more than one technology, or treatment train, are specified as alternative treatment standards, the five letter technology codes, or the treatment trains, are separated by a semicolon (;) with the last technology preceded by the word "OR".

This indicates that any one of these BDAT technologies or treatment trains can be used for compliance with the standard.

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in Subsection R315-268-42(a), (c), and (d) for wastes or specified in Table 1 of Section R315-268-45 for hazardous debris. The applicant shall submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in Subsections R315-268-42(a), (c), and (d) for wastes or in Table 1 of Section R315-268-45 for hazardous debris. Any approval shall be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued shall comply with all limitations contained in such a determination.

(c) As an alternative to the otherwise applicable Sections R315-268-40 through 49 treatment standards, lab packs are eligible for land disposal provided the following requirements are met:

(1) The lab packs comply with the applicable provisions of Section R315-264-316 and 40 CFR 265.316, which is adopted by reference;

(2) The lab pack does not contain any of the wastes listed in Appendix IV to Rule R315-268;

(3) The lab packs are incinerated in accordance with the requirements of Sections R315-264-340 through 351, or 40 CFR 265.340 through 352, which are adopted by reference; and

(4) Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in Sections R315-268-40 through 49.

(d) Radioactive hazardous mixed wastes are subject to the

treatment standards in Section R315-268-40. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards shall govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste, as designated by EPA waste code, applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in Section R315-268-45.

R315-268-43. Land Disposal Restrictions -- Treatment Standards Expressed as Waste Concentrations.

For the requirements previously found in Section R315-268-43 and for treatment standards in Table CCW-Constituent Concentrations in Wastes, refer to Section R315-268-40.

R315-268-44. Land Disposal Restrictions -- Variance From a Treatment Standard.

(a) Based on a petition filed by a generator or treater of hazardous waste, the Administrator may approve a variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate, for example, resulting in combustion of large amounts of mildly contaminated environmental media; or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(b) Each petition shall be submitted in accordance with the procedures in 40 CFR 260.20.

(c) Each petition shall include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition 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.

(d) After receiving a petition for variance from a treatment standard, the Administrator may request any additional information or samples which he may require to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.

(e) The Administrator shall give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a variance from a treatment standard shall be published in the Federal Register.

(f) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under Section R315-268-7.

(g) During the petition review process, the applicant is required to comply with all restrictions on land disposal under Rule R315-268 once the effective date for the waste has been reached.

(h) Based on a petition filed by a generator or treater of hazardous waste, the Director may approve a site-specific variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate, for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media; or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(3) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below, i.e., lower than, the concentrations necessary to minimize short- and long-term threats to human health and the environment. Treatment variances approved under Subsection R315-268-44(h) shall:

(i) At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario:

(A) For carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from 10⁻⁴ to 10⁻⁶; and

(B) For constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.

(ii) Not consider post-land-disposal controls.

(4) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below, i.e., lower than, natural background concentrations at the site where the contaminated soil will be land disposed.

(5) Public notice and a reasonable opportunity for public comment shall be provided before granting or denying a petition.

(i) Each application for a site-specific variance from a treatment standard shall include the information in Subsections R315-260-20(b)(1)-(4);

(j) After receiving an application for a site-specific variance from a treatment standard, the Director may request any additional information or samples which may be required to evaluate the application.

(k) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard shall comply with the waste analysis requirements for restricted wastes found under Section R315-268-7.

(l) During the application review process, the applicant for a site-specific variance shall comply with all restrictions on land disposal under Rule R315-268 once the effective date for the waste has been reached.

(m) For all variances, the petitioner shall also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, EPA or the Director, whichever is applicable, may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal pursuant to Sections R315-266-20 through 23.

(n) (Reserved)

(o) The following facilities are excluded from the treatment standards under Section R315-268-40, and are subject to the

following constituent concentrations:

EnergySolutions LLC, Clive, UT -- This site-specific treatment variance applies only to solid treatment residue resulting from the vacuum thermal desorption (VTD) of P- and U-listed hazardous waste containing radioactive contamination, "mixed waste," at the EnergySolutions' LLC facility in Clive, Utah that otherwise requires CMBST as the LDR treatment standard. Once the P- and U-listed mixed waste are treated using VTD, the solid treatment residue can be land disposed at EnergySolutions' onsite RCRA permitted mixed waste landfill without further treatment. This treatment variance is conditioned on EnergySolutions complying with a Waste Family Demonstration Testing Plan specifically addressing the treatment of these P- and U-listed wastes, with this plan being implemented through a RCRA Part B permit modification for the VTD unit.

R315-268-45. Land Disposal Restrictions -- Treatment Standards for Hazardous Debris.

(a) Treatment standards. Hazardous debris shall be treated prior to land disposal as follows unless the Director determines under Subsection R315-261-3(f)(2) that the debris is no longer contaminated with hazardous waste or the debris is treated to the waste-specific treatment standard provided in Sections R315-268-40 through 49 for the waste contaminating the debris:

(1) General. Hazardous debris shall be treated for each "contaminant subject to treatment" defined by Subsection R315-268-45(b) using the technology or technologies identified in Table 1 of Section R315-268-45.

(2) Characteristic debris. Hazardous debris that exhibits the characteristic of ignitability, corrosivity, or reactivity identified under Sections R315-261-21, 22, and 23, respectively, shall be deactivated by treatment using one of the technologies identified in Table 1 of Section R315-268-45.

(3) Mixtures of debris types. The treatment standards of Table 1 in Section R315-268-45 shall be achieved for each type of debris contained in a mixture of debris types. If an immobilization technology is used in a treatment train, it shall be the last treatment technology used.

(4) Mixtures of contaminant types. Debris that is contaminated with two or more contaminants subject to treatment identified under Subsection R315-268-45(b) shall be treated for each contaminant using one or more treatment technologies identified in Table 1 of Section R315-268-45. If an immobilization technology is used in a treatment train, it shall be the last treatment technology used.

(5) Waste PCBs. Hazardous debris that is also a waste PCB under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of Section R315-268-45, whichever are more stringent.

(b) Contaminants subject to treatment. Hazardous debris shall be treated for each "contaminant subject to treatment." The contaminants subject to treatment shall be determined as follows:

(1) Toxicity characteristic debris. The contaminants subject to treatment for debris that exhibits the Toxicity Characteristic (TC) by Section R315-261-24 are those EP constituents for which the debris exhibits the TC toxicity characteristic.

(2) Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established for the waste under Section R315-268-40.

(3) Cyanide reactive debris. Hazardous debris that is reactive because of cyanide shall be treated for cyanide.

(c) Conditioned exclusion of treated debris. Hazardous debris that has been treated using one of the specified extraction or destruction technologies in Table 1 of Section R315-268-45 and that does not exhibit a characteristic of hazardous waste identified under Sections R315-261-20 through 24 after treatment is not a hazardous waste and need not be managed in a hazardous waste facility. Hazardous debris contaminated with a listed waste that is treated by

an immobilization technology specified in Table 1 is a hazardous waste and shall be managed in a hazardous waste facility.

(d) Treatment residuals

(1) General requirements. Except as provided by Subsections R315-268-45(d)(2) and (d)(4):

(i) Residue from the treatment of hazardous debris shall be separated from the treated debris using simple physical or mechanical means; and

(ii) Residue from the treatment of hazardous debris is subject to the waste-specific treatment standards provided by Sections R315-268-40 through 49 for the waste contaminating the debris.

(2) Nontoxic debris. Residue from the deactivation of ignitable, corrosive, or reactive characteristic hazardous debris, other than cyanide-reactive, that is not contaminated with a contaminant subject to treatment defined by Subsection R315-268-45(b), shall be deactivated prior to land disposal and is not subject to the waste-specific treatment standards of Sections R315-268-40 through 49.

(3) Cyanide-reactive debris. Residue from the treatment of debris that is reactive because of cyanide shall meet the treatment standards for D003 in "Treatment Standards for Hazardous Wastes" at Section R315-268-40.

(4) Ignitable nonwastewater residue. Ignitable nonwastewater residue containing equal to or greater than 10% total organic carbon is subject to the technology specified in the treatment standard for D001: Ignitable Liquids.

(5) Residue from spalling. Layers of debris removed by spalling are hazardous debris that remain subject to the treatment standards of Section R315-268-45.

Table 1-Alternative Treatment Standards For Hazardous Debris, including footnotes found in 40 CFR 268.45, 2015 edition, is adopted and incorporated by reference.

R315-268-46. Land Disposal Restrictions -- Alternative Treatment Standards Based on HTMR.

For the treatment standards previously found in Section R315-268-46, refer to Section R315-268-40.

R315-268-48. Land Disposal Restrictions -- Universal Treatment Standards.

(a) Table UTS identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in Subsection R315-268-2(i), these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

Table
Universal Treatment Standards (UTS)

Note: NA means not applicable

Regulated constituent common name	CAS ¹ number	Wastewater standard Concentration ² in mg/l	Nonwastewater standard Concentration ² in mg/kg unless noted as "mg/l TCLP"
Organic Constituents			
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2		0.010
Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14

o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Benzene	71-43-2	0.14	10
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	207-08-9	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	191-24-2	0.0055	1.8
Benzo(g,h,i)perylene	50-32-8	0.061	3.4
Benzo(a)pyrene	75-27-4	0.35	15
Bromodichloromethane	74-83-9	0.11	15
Bromomethane/Methyl bromide	101-55-3	0.055	15
4-Bromophenyl phenyl ether	71-36-3	5.6	2.6
n-Butyl alcohol	85-68-7	0.017	28
Butyl benzyl phthalate	88-85-7	0.066	2.5
2-sec-Butyl-4,6-dinitrophenol/Dinoseb	75-15-0	3.8	4.8 mg/l TCLP
Carbon disulfide	56-23-5	0.057	6.0
Carbon tetrachloride	57-74-9	0.0033	0.26
Chlordane (alpha and gamma isomers)	106-47-8	0.46	16
p-Chloroaniline	108-90-7	0.057	6.0
Chlorobenzene	510-15-6	0.10	NA
Chlorobenzilate	126-99-8	0.057	0.28
2-Chloro-1,3-butadiene	124-48-1	0.057	15
Chlorodibromomethane	75-00-3	0.27	6.0
Chloroethane	111-91-1	0.036	7.2
bis(2-Chloroethoxy) methane	111-44-4	0.033	6.0
bis(2-Chloroethyl) ether	67-66-3	0.046	6.0
Chloroform	39638-32-9	0.055	7.2
bis(2-Chloroisopropyl) ether	59-50-7	0.018	14
p-Chloro-m-cresol	110-75-8	0.062	NA
2-Chloroethyl vinyl ether	74-87-3	0.19	30
Chloromethane/Methyl chloride	91-58-7	0.055	5.6
2-Chloronaphthalene	95-57-8	0.044	5.7
2-Chloropropene	107-05-1	0.036	30
3-Chloropropylene	218-01-9	0.059	3.4
Chrysene	120-71-8	0.010	0.66
p-Cresidine	95-48-7	0.11	5.6
o-Cresol	108-39-4	0.77	5.6
m-Cresol (difficult to distinguish from p-cresol)	106-44-5	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	108-94-1	0.36	0.75 mg/l TCLP
Cyclohexanone	53-19-0	0.023	0.087
o,p'-DDD	72-54-8	0.023	0.087
p,p'-DDD	3424-82-6	0.031	0.087
o,p'-DDE	72-55-9	0.031	0.087
p,p'-DDE	789-02-6	0.0039	0.087
o,p'-DDT	50-29-3	0.0039	0.087
p,p'-DDT	53-70-3	0.055	8.2
Dibenz(a,h)anthracene	192-65-4	0.061	NA
Dibenz(a,e)pyrene	96-12-8	0.11	15
1,2-Dibromo-3-chloropropane	106-93-4	0.028	15
1,2-Dibromoethane/Ethylene dibromide	74-95-3	0.11	15
Dibromomethane	541-73-1	0.036	6.0
m-Dichlorobenzene	95-50-1	0.088	6.0
o-Dichlorobenzene	106-46-7	0.090	6.0
p-Dichlorobenzene	75-71-8	0.23	7.2
Dichlorodifluoromethane	75-34-3	0.059	6.0
1,1-Dichloroethane	107-06-2	0.21	6.0
1,2-Dichloroethane	75-35-4	0.025	6.0
1,1-Dichloroethylene	156-60-5	0.054	30
trans-1,2-Dichloroethylene	120-83-2	0.044	14
2,4-Dichlorophenol			

2,6-Dichlorophenol	87-65-0	0.044	14	Methylene chloride	75-09-2	0.089	30
2,4-Dichlorophenoxyacetic acid/2,4-D	94-75-7	0.72	10	Methyl ethyl ketone	78-93-3	0.28	36
1,2-Dichloropropane	78-87-5	0.85	18	Methyl isobutyl ketone	108-10-1	0.14	33
cis-1,3-Dichloropropylene	10061-01-5	0.036	18	Methyl methacrylate	80-62-6	0.14	160
trans-1,3-Dichloropropylene	10061-02-6	0.036	18	Methyl methanesulfonate	66-27-3	0.018	NA
Diieldrin	60-57-1	0.017	0.13	Methyl parathion	298-00-0	0.014	4.6
Diethyl phthalate	84-66-2	0.20	28	Naphthalene	91-20-3	0.059	5.6
p-Dimethylaminoazobenzene	60-11-7	0.13	NA	2-Naphthylamine	91-59-8	0.52	NA
2,4-Dimethylaniline (2,4-xylidine)	95-68-1	0.010	0.66	o-Nitroaniline	88-74-4	0.27	14
2,4-Dimethyl phenol	105-67-9	0.036	14	p-Nitroaniline	100-01-6	0.028	28
Dimethyl phthalate	131-11-3	0.047	28	Nitrobenzene	98-95-3	0.068	14
Di-n-butyl phthalate	84-74-2	0.057	28	5-Nitro-o-toluidine	99-55-8	0.32	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3	o-Nitrophenol	88-75-5	0.028	13
4,6-Dinitro-o-cresol	534-52-1	0.28	160	p-Nitrophenol	100-02-7	0.12	29
2,4-Dinitrophenol	51-28-5	0.12	160	N-Nitrosodiethylamine	55-18-5	0.40	28
2,4-Dinitrotoluene	121-14-2	0.32	140	N-Nitrosodimethylamine	62-75-9	0.40	2.3
2,6-Dinitrotoluene	606-20-2	0.55	28	N-Nitroso-di-n-butylamine	924-16-3	0.40	17
Di-n-octyl phthalate	117-84-0	0.017	28	N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
Di-n-propylnitrosamine	621-64-7	0.40	14	N-Nitrosomorpholine	59-89-2	0.40	2.3
1,4-Dioxane	123-91-1	12.0	170	N-Nitrosopiperidine	100-75-4	0.013	35
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13	N-Nitrosopyrrolidine	930-55-2	0.013	35
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063	0.005
1,2-Diphenylhydrazine	122-66-7	0.087	NA	1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063	0.005
Disulfoton	298-04-4	0.017	6.2	Parathion	56-38-2	0.014	4.6
Endosulfan I	959-98-8	0.023	0.066	Total PCBs (sum of all PCB isomers, or all Aroclors) ^g	1336-36-3	0.10	10
Endosulfan II	33213-65-9	0.029	0.13	Pentachlorobenzene	608-93-5	0.055	10
Endosulfan sulfate	1031-07-8	0.029	0.13	PeCDDs (All)	NA	0.000063	0.001
Endrin	72-20-8	0.0028	0.13	Pentachlorodibenzo-p-dioxins)	NA	0.000035	0.001
Endrin aldehyde	7421-93-4	0.025	0.13	Pentachlorodibenzofurans)	NA	0.000035	0.001
Ethyl acetate	141-78-6	0.34	33	Pentachloroethane	76-01-7	0.055	6.0
Ethyl benzene	100-41-4	0.057	10	Pentachloronitrobenzene	82-68-8	0.055	4.8
Ethyl cyanide/Propanenitrile	107-12-0	0.24	360	Pentachlorophenol	87-86-5	0.089	7.4
Ethyl ether	60-29-7	0.12	160	Phenacetin	62-44-2	0.081	16
bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28	Phenanthrene	85-01-8	0.059	5.6
Ethyl methacrylate	97-63-2	0.14	160	Phenol	108-95-2	0.039	6.2
Ethylene oxide	75-21-8	0.12	NA	1,3-Phenylenediamine	108-45-2	0.010	0.66
Famphur	52-85-7	0.017	15	Phorate	298-02-2	0.021	4.6
Fluoranthene	206-44-0	0.068	3.4	Phthalic acid	100-21-0	0.055	28
Fluorene	86-73-7	0.059	3.4	Phthalic anhydride	85-44-9	0.055	28
Heptachlor	76-44-8	0.0012	0.066	Pronamide	23950-58-5	0.093	1.5
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	.0025	Pyrene	129-00-0	0.067	8.2
1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	.0025	Pyridine	110-86-1	0.014	16
1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	.0025	Safrole	94-59-7	0.081	22
Heptachlor epoxide	1024-57-3	0.016	0.066	Silvex/2,4,5-TP	93-72-1	0.72	7.9
Hexachlorobenzene	118-74-1	0.055	10	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
Hexachlorobutadiene	87-68-3	0.055	5.6	TCDDs (All)	NA	0.000063	0.001
Hexachlorocyclopentadiene	77-47-4	0.057	2.4	Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDDs (All)	NA	0.000063	0.001	TCDFs (All)	NA	0.000063	0.001
Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001	Tetrachlorodibenzofurans)	NA	0.000063	0.001
HxCDFs (All)	NA	0.000063	0.001	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
Hexachlorodibenzofurans)	NA	0.000063	0.001	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Hexachloroethane	67-72-1	0.055	30	Tetrachloroethylene	127-18-4	0.056	6.0
Hexachloropropylene	1888-71-7	0.035	30	2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4	Toluene	108-88-3	0.080	10
Iodomethane	74-88-4	0.19	65	Toxaphene	8001-35-2	0.0095	2.6
Isobutyl alcohol	78-83-1	5.6	170	Tribromomethane/Bromofom	75-25-2	0.63	15
Isodrin	465-73-6	0.021	0.066	1,2,4-Trichlorobenzene	120-82-1	0.055	19
Isosafrole	120-58-1	0.081	2.6	1,1,1-Trichloroethane	71-55-6	0.054	6.0
Kepone	143-50-0	0.0011	0.13	1,1,2-Trichloroethane	79-00-5	0.054	6.0
Methacrylonitrile	126-98-7	0.24	84	Trichloroethylene	79-01-6	0.054	6.0
Methanol	67-56-1	5.6 0	.75 mg/1 TCLP	Trichlorofluoromethane	75-69-4	0.020	30
Methapyrilene	91-80-5	0.081	1.5	2,4,5-Trichlorophenol	95-95-4	0.18	7.4
Methoxychlor	72-43-5	0.25	0.18	2,4,6-Trichlorophenol	88-06-2	0.035	7.4
3-Methylcholanthrene	56-49-5	0.0055	15	2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93-76-5	0.72	7.9
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30	1,2,3-Trichloropropane	96-18-4	0.85	30
				1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
				tris-(2,3-Dibromopropyl) phosphate	126-72-7	0.11	0.10
				Vinyl chloride	75-01-4	0.27	6.0
				Xylenes-mixed isomers	1330-20-7	0.32	30

(sum of o-, m-, and p-xylene concentrations)

Inorganic Constituents			
Antimony	7440-36-0	1.9	1.15 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) ⁴	57-12-5	1.2	590
Cyanides (Amenable) ⁴	57-12-5	0.86	30
Fluoride ⁵	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury---Nonwastewater	7439-97-6	NA	0.20 mg/l TCLP
from Retort			
Mercury-All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium ⁷	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide ⁵	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.20 mg/l TCLP
Vanadium ⁸	7440-62-2	4.3	1.6 mg/l TCLP
Zinc ⁵	7440-66-6	2.61	4.3 mg/l TCLP

Footnotes to Table UTS

- CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
- Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.
- Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Sections R315-264-340 through 351 or 40 CFR 265.340 through 352, which are adopted by reference, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in Subsection R315-268-40(d).
All concentration standards for nonwastewaters are based on analysis of grab samples.
- Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.
- These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at Subsection R315-268-2(i).
- Reserved
- This constituent is not an underlying hazardous constituent as defined at Subsection R315-268-2(i) because its UTS level is greater than its TC level, thus a treatment selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level.
- This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004-D011 only.

R315-268-49. Land Disposal Restrictions -- Alternative LDR Treatment Standards for Contaminated Soil.

(a) Applicability. You shall comply with LDRs prior to placing soil that exhibits a characteristic of hazardous waste, or exhibited a characteristic of hazardous waste at the time it was generated, into a land disposal unit. The following chart describes

whether you shall comply with LDRs prior to placing soil contaminated by listed hazardous waste into a land disposal unit:

Table			
If LDRs	And if LDRs	And if	Then you
Applied to the listed waste when it contaminated the soil*	Apply to the listed waste now		Shall comply with LDRs.
Didn't apply to the listed waste when it contaminated the soil*	Apply to the listed waste now	The soil is determined to contain the listed waste when the soil is first generated	Shall comply with LDRs.
Didn't apply to the listed waste when it contaminated the soil*	Apply to the listed waste now	The soil is determined not to contain the listed waste when the soil is first generated	Need not comply with LDRs.
Didn't apply to the listed waste when it contaminated the soil*	Don't apply to the listed waste now		Need not comply with LDRs.

*For dates of LDR applicability, see Rule R315-268 Appendix VII. To determine the date any given listed hazardous waste contaminated any given volume of soil, use the last date any given listed hazardous waste was placed into any given land disposal unit or, in the case of an accidental spill, the date of the spill.

(b) Prior to land disposal, contaminated soil identified by Subsection R315-268-49(a) as needing to comply with LDRs shall be treated according to the applicable treatment standards specified in Subsection R315-268-49(c) or according to the Universal Treatment Standards specified in Section R315-268-48 applicable to the contaminating listed hazardous waste and/or the applicable characteristic of hazardous waste if the soil is characteristic. The treatment standards specified in Subsection R315-268-49(c) and the Universal Treatment Standards may be modified through a treatment variance approved in accordance with Section R315-268-44.

(c) Treatment standards for contaminated soils. Prior to land disposal, contaminated soil identified by Subsection R315-268-49(a) as needing to comply with LDRs shall be treated according to all the standards specified in Subsection R315-268-49(c) or according to the Universal Treatment Standards specified in Section R315-268-48.

(1) All soils. Prior to land disposal, all constituents subject to treatment shall be treated as follows:

(A) For non-metals except carbon disulfide, cyclohexanone, and methanol, treatment shall achieve 90 percent reduction in total constituent concentrations, except as provided by Subsection R315-268-49(c)(1)(C).

(B) For metals and carbon disulfide, cyclohexanone, and methanol, treatment shall achieve 90 percent reduction in constituent concentrations as measured in leachate from the treated 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 R315-268-49(c)(1)(C).

(C) When treatment of any constituent subject to treatment 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.

(2) Soils that exhibit the characteristic of ignitability, corrosivity or reactivity. In addition to the treatment required by

Subsection R315-268-49(c)(1), prior to land disposal, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity shall be treated to eliminate these characteristics.

(3) Soils that contain nonanalyzable constituents. In addition to the treatment requirements of Subsections R315-268-49(c)(1) and (2), prior to land disposal, the following treatment is required for soils that contain nonanalyzable constituents:

(A) For soil that contains only analyzable and nonanalyzable organic constituents, treatment of the analyzable organic constituents to the levels specified in Subsections R315-268-49(c)(1) and (2); or,

(B) For soil that contains only nonanalyzable constituents, treatment by the method(s) specified in Section R315-268-42 for the waste contained in the soil.

(d) Constituents subject to treatment. When applying the soil treatment standards in Subsection R315-268-49(c), constituents subject to treatment are any constituents listed in Section R315-268-48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except fluoride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

(e) Management of treatment residuals. Treatment residuals from treating contaminated soil identified by Subsection R315-268-49(a) as needing to comply with LDRs shall be managed as follows:

(1) Soil residuals are subject to the treatment standards of Section R315-268-49;

(2) Non-soil residuals are subject to:

(A) For soils contaminated by listed hazardous waste, the hazardous waste standards applicable to the listed hazardous waste; and

(B) For soils that exhibit a characteristic of hazardous waste, if the non-soil residual also exhibits a characteristic of hazardous waste, the treatment standards applicable to the characteristic hazardous waste.

R315-268-50. Land Disposal Restrictions -- Prohibitions on Storage of Restricted Wastes.

(a) Except as provided in Section R315-268-50, the storage of hazardous wastes restricted from land disposal under Sections R315-268-20 through 39 is prohibited, unless the following conditions are met:

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in Sections R315-262-16 and R315-262-17, and Rules R315-264 and R315-265.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(i) Each container is clearly marked to identify its contents and with:

(A) The words "Hazardous Waste";

(B) The applicable EPA hazardous waste number(s), EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste number(s);

(C) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling,

or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(D) The date each period of accumulation begins;

(ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator shall comply with the operating record requirements specified in Section R315-264-73 or 40 CFR 265.73, which are adopted by reference.

(3) A transporter stores manifested shipments of such wastes at a transfer facility for 10 days or less.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Director can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste, for example, because of an approved case-by-case extension under Section R315-268-5, an approved Section R315-268-6 petition, or a national capacity variance under Sections R315-268-20 through 39, the prohibition in Subsection R315-268-50(a) does not apply during the period of such exemption.

(e) The prohibition in Subsection R315-268-50(a) does not apply to hazardous wastes that meet the treatment standards specified under Sections R315-268-41, 42, and 43 or the treatment standards specified under the variance in Section R315-268-44, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in Section R315-268-32 or RCRA section 3004.

(f) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm shall be stored at a facility that meets the requirements of 40 CFR 761.65(b) and shall be removed from storage and treated or disposed as required by Rule R315-268 within one year of the date when such wastes are first placed into storage. The provisions of Subsection R315-268-50(c) do not apply to such PCB wastes prohibited under Section R315-268-32.

(g) The prohibition and requirements in Section R315-268-50 do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to Section R315-264-554.

R315-268-51. Appendix III to Rule R315-268 - List of Halogenated Organic Compounds Regulated Under Section R315-268-32.

In determining the concentration of HOCs in a hazardous waste for purposes of the Section R315-268-32 land disposal prohibition, the Director has defined the HOCs that shall be included in a calculation as any compounds having a carbon-halogen bond which are listed in this Appendix, see Section R315-268-2. Appendix III to Rule R315-268 consists of the following compounds:

- I. Volatiles
 1. Bromodichloromethane
 2. Bromomethane
 3. Carbon Tetrachloride
 4. Chlorobenzene

5. 2-Chloro-1,3-butadiene
6. Chlorodibromomethane
7. Chloroethane
8. 2-Chloroethyl vinyl ether
9. Chloroform
10. Chloromethane
11. 3-Chloropropene
12. 1,2-Dibromo-3-chloropropane
13. 1,2-Dibromomethane
14. Dibromomethane
15. Trans-1,4-Dichloro-2-butene
16. Dichlorodifluoromethane
17. 1,1-Dichloroethane
18. 1,2-Dichloroethane
19. 1,1-Dichloroethylene
20. Trans-1,2-Dichloroethene
21. 1,2-Dichloropropane
22. Trans-1,3-Dichloropropene
23. cis-1,3-Dichloropropene
24. Iodomethane
25. Methylene chloride
26. 1,1,1,2-Tetrachloroethane
27. 1,1,2,2-Tetrachloroethane
28. Tetrachloroethene
29. Tribromomethane
30. 1,1,1-Trichloroethane
31. 1,1,2-Trichloroethane
32. Trichloroethene
33. Trichloromonofluoromethane
34. 1,2,3-Trichloropropene
35. Vinyl Chloride
- II. Semivolatiles
 1. Bis(2-chloroethoxy)ethane
 2. Bis(2-chloroethyl)ether
 3. Bis(2-chloroisopropyl)ether
 4. p-Chloroaniline
 5. Chlorobenzilate
 6. p-Chloro-m-cresol
 7. 2-Chloronaphthalene
 8. 2-Chlorophenol
 9. 3-Chloropropionitrile
 10. m-Dichlorobenzene
 11. o-Dichlorobenzene
 12. p-Dichlorobenzene
 13. 3,3'-Dichlorobenzidine
 14. 2,4-Dichlorophenol
 15. 2,6-Dichlorophenol
 16. Hexachlorobenzene
 17. Hexachlorobutadiene
 18. Hexachlorocyclopentadiene
 19. Hexachloroethane
 20. Hexachloropropene
 21. Hexachloropropene
 22. 4,4'-Methylenebis(2-chloroaniline)
 23. Pentachlorobenzene
 24. Pentachloroethane
 25. Pentachloronitrobenzene
 26. Pentachlorophenol
 27. Pronamide
 28. 1,2,4,5-Tetrachlorobenzene
 29. 2,3,4,6-Tetrachlorophenol
 30. 1,2,4-Trichlorobenzene
 31. 2,4,5-Trichlorophenol
 32. 2,4,6-Trichlorophenol
 33. Tris(2,3-dibromopropyl)phosphate
- III. Organochlorine Pesticides
 1. Aldrin
 2. alpha-BHC
 3. beta-BHC

4. delta-BHC
5. gamma-BHC
6. Chlorodane
7. DDD
8. DDE
9. DDT
10. Dieldrin
11. Endosulfan I
12. Endosulfan II
13. Endrin
14. Endrin aldehyde
15. Heptachlor
16. Heptachlor epoxide
17. Isodrin
18. Kepone
19. Methoxychlor
20. Toxaphene
- IV. Phenoxyacetic Acid Herbicides
 1. 2,4-Dichlorophenoxyacetic acid
 2. Silvex
 3. 2,4,5-T
- V. PCBs
 1. Aroclor 1016
 2. Aroclor 1221
 3. Aroclor 1232
 4. Aroclor 1242
 5. Aroclor 1248
 6. Aroclor 1254
 7. Aroclor 1260
 8. PCBs not otherwise specified
- VI. Dioxins and Furans
 1. Hexachlorodibenzo-p-dioxins
 2. Hexachlorodibenzofuran
 3. Pentachlorodibenzo-p-dioxins
 4. Pentachlorodibenzofuran
 5. Tetrachlorodibenzo-p-dioxins
 6. Tetrachlorodibenzofuran
 7. 2,3,7,8-Tetrachlorodibenzo-p-dioxin

R315-268-52. Appendix IV to Rule R315-268 - Wastes Excluded from Lab Packs Under the Alternative Treatment Standards of Subsection R315-268-42(c).

Hazardous waste with the following EPA Hazardous Waste Codes may not be placed in lab packs under the alternative lab pack treatment standards of Subsection R315-268-42(c): D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

R315-268-53. Appendix VI to Rule R315-268 - Recommended Technologies to Achieve Deactivation of Characteristics in Section R315-268-42.

The treatment standard for many characteristic wastes is stated in the Section R315-268-40 Table of Treatment Standards as "Deactivation and meet UTS." The Director has determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that are not managed in a facility regulated by the Clean Water Act (CWA) or in a CWA-equivalent facility, and that also contain underlying hazardous constituents, see Subsection R315-268-2(i), shall be treated not only by a "deactivating" technology to remove the characteristic, but also to achieve the universal treatment standards (UTS) for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in Section R315-268-42 Table 1, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, and/or the use of other pretreatment technologies, provided deactivation is achieved and underlying hazardous constituents are treated to achieve the UTS.

Waste code/subcategory	Nonwastewaters	Wastewaters
D001 Ignitable Liquids based on R315-261-21(a)(1)-Low TOC Nonwastewater Subcategory, containing 1% to <10% TOC	RORGS INCIN WETOX CHOXD BIODG	n.a.
D001 Ignitable Liquids based on Subsection R315-261-21(a)(1)-Ignitable Wastewater Subcategory, containing <1% TOC	n.a.	RORGS INCIN WETOX CHOXD BIODG
D001 Compressed Gases based on Subsection R315-261-21(A)(3)	RCGAS INCIN FSUBS ADGAS fb. ADGAS fb. (CHOXD; or CHRED)	n.a.
D001 Ignitable Reactives based on Subsection R315-261-21(a)(2)	WTRRX CHOXD CHRED STABL INCIN	n.a.
D001 Ignitable Oxidizers based on Subsection R315-261-21(a)(4)	CHRED INCIN	CHRED INCIN
D002 Acid Subcategory based on Subsection R315-261-22(a)(1) with pH less than or equal to 2	RCORR NEUTR INCIN	NEUTR INCIN
D002 Alkaline Subcategory based on Subsection R315-261-22(a)(1) with pH greater than or equal to 12.5	NEUTR INCIN	NEUTR INCIN
D002 Other Corrosives based on Subsection R315-261-22(a)(2)	CHOXD CHRED INCIN STABL	CHOXD CHRED INCIN
D003 Water Reactives based on Subsections R315-268-23(a)(2), (3), and (4)	INCIN WTRRX CHOXD CHRED	n.a.
D003 Reactive Sulfides based on Subsection R315-261-23(a)(5)	CHOXD CHRED INCIN STABL	CHOXD CHRED BIODG INCIN
D003 Explosives based on Subsection R315-261-23(a)(6), (7), and (8)	INCIN CHOXD CHRED	INCIN CHOXD CHRED
D003 Other Reactives based on Subsection R315-261-23(a)(1)	INCIN CHOXD CHRED	INCIN CHOXD CHRED BIODG CARBN
K044 Wastewater treatment sludges from the manufacturing and processing of explosives	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN
K045 Spent carbon from the treatment of wastewaters containing explosives	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN
K047 Pink/red water from TNT operations	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN

Note: "n.a." stands for "not applicable"; "fb." stands for "followed by".

R315-268-54. Appendix VII to Rule R315-268 - LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes.

Waste Code	Waste category	Effective date
D001 ^c	All (except High TOC Ignitable Liquids)	Aug. 9, 1993.
D001	High TOC Ignitable Liquids,	Aug. 8, 1990.
D002 ^c	All	Aug. 9, 1993.
D003	Newly identified surface-disposed elemental phosphorus processing wastes.	May 26, 2000
D004	Newly identified D004 and mineral processing wastes	Aug. 24, 1998.
D004	Mixed radioactive/newly identified D004 or mineral processing wastes	May 26, 2000
D005	Newly identified D005 and mineral processing wastes	Aug. 24, 1998.
D005	Mixed radioactive/newly identified D005 or mineral processing wastes	May 26, 2000.
D006	Newly identified D006 and mineral processing wastes	Aug. 24, 1998.
D006	Mixed radioactive/newly identified D006 or mineral processing wastes	May 26, 2000.
D007	Newly identified D007 and mineral processing wastes	Aug. 24, 1998.
D007	Mixed radioactive/newly identified D007 or mineral processing wastes	May 26, 2000.
D008	Newly identified D008 and mineral processing waste	Aug. 24, 1998.
D008	Mixed radioactive/newly identified D008 or mineral processing wastes,	May 26, 2000.
D009	Newly identified D009 and mineral processing waste	Aug. 24, 1998.
D009	Mixed radioactive/newly identified D009 or mineral processing wastes	May 26, 2000.
D010	Newly identified D010 and mineral processing wastes	Aug. 24, 1998.
D010	Mixed radioactive/newly identified D010 or mineral processing wastes	May 26, 2000.
D011	Newly identified D011 and mineral processing wastes	Aug. 24, 1998.
D011	Mixed radioactive/newly identified D011 or mineral processing wastes	May 26, 2000.
D012 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994
D013 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994
D014 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994
D015 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994
D016 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994
D017 (that exhibit the toxicity characteristic based on the TCLP) ^d	All	Dec. 14, 1994

D018	Mixed with radioactive wastes	Sept.19, 1996.	D040	All others	1996. Dec. 19, 1994.
D018	All others	Dec. 19, 1994.	D041	Mixed with radioactive wastes	Sept.19, 1996.
D019	Mixed with radioactive wastes	Sept.19, 1996.	D041	All others	Dec. 19, 1994.
D019	All others	Dec. 19, 1994.	D042	Mixed with radioactive wastes	Sept.19, 1996.
D020	Mixed with radioactive wastes	Sept.19, 1996.	D042	All others	Dec. 19, 1994.
D020	All others	Dec. 19, 1994.	D043	Mixed with radioactive wastes	Sept.19, 1996.
D021	Mixed with radioactive wastes	Sept.19, 1996.	D043	All others	Dec. 19, 1994.
D021	All others	Dec. 19, 1994.	F001	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988
D022	Mixed with radioactive wastes	Sept.19, 1996.	F001	All others	Nov. 8, 1986.
D022	All others	Dec. 19, 1994.	F002 (1,1,2-trichloroethane)	Wastewater and Nonwastewater	Aug. 8, 1990.
D023	Mixed with radioactive wastes	Sept.19, 1996.	F002	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	Nov. 8, 1988
D023	All others	Dec. 19, 1994.	F002	All others	Nov. 8, 1986.
D024	Mixed with radioactive wastes	Sept.19, 1996.	F003	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids,	Nov. 8, 1988.
D024	All others	Dec. 19, 1994.	F003	All others	Nov. 8, 1986.
D025	Mixed with radioactive wastes	Sept.19, 1996.	F004	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	Nov. 8, 1988.
D025	All others	Dec. 19, 1994.	F004	All others	Nov. 8, 1986.
D026	Mixed with radioactive wastes	Sept.19, 1996.	F005 (benzene, 2-ethoxy ethanol, 2-nitropropane)	Wastewater and Nonwastewater	Aug. 8, 1990.
D026	All others	Dec. 19, 1994.	F005	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	Nov. 8, 1988.
D027	Mixed with radioactive wastes	Sept.19, 1996.	F005	All others	Nov. 8, 1986.
D027	All others	Dec. 19, 1994.	F006	Wastewater	Aug. 8, 1990.
D028	Mixed with radioactive wastes	Sept.19, 1996.	F006	Nonwastewater	Aug. 8, 1988.
D028	All others	Dec. 19, 1994.	F006 (cyanides)	Nonwastewater	July 8, 1989.
D029	Mixed with radioactive wastes	Sept.19, 1996.	F007	All	July 8, 1989.
D029	All others	Dec. 19, 1994.	F008	All	July 8, 1989.
D030	Mixed with radioactive wastes	Sept.19, 1996.	F009	All	July 8, 1989.
D030	All others	Dec. 19, 1994.	F010	All	July 8, 1989.
D031	Mixed with radioactive wastes	Sept.19, 1996.	F011 (cyanides)	Nonwastewater	Dec. 8, 1989.
D031	All others	Dec. 19, 1994.	F011	All others	July 8, 1989.
D032	Mixed with radioactive wastes	Sept.19, 1996.	F012 (cyanides)	Nonwastewater	Dec. 8, 1989.
D032	All others	Dec. 19, 1994.	F012	All others	July 8, 1989.
D033	Mixed with radioactive wastes	Sept.19, 1996.	F019	All	Aug. 8, 1990.
D033	All others	Dec. 19, 1994.	F020	All	Aug. 8, 1988.
D034	Mixed with radioactive wastes	Sept.19, 1996.	F021	All	Aug. 8, 1988.
D034	All others	Dec. 19, 1994.	F025	All	Aug. 8, 1990.
D035	Mixed with radioactive wastes	Sept.19, 1996.	F026	All	Aug. 8, 1988.
D035	All others	Dec. 19, 1994.	F027	All	Aug. 8, 1988.
D036	Mixed with radioactive wastes	Sept.19, 1996.			Aug. 8, 1990.
D036	All others	Dec. 19, 1994.			Aug. 8, 1988.
D037	Mixed with radioactive wastes	Sept.19, 1996.			Aug. 8, 1990.
D037	All others	Dec. 19, 1994.			Aug. 8, 1988.
D038	Mixed with radioactive wastes	Sept.19, 1996.			Aug. 8, 1990.
D038	All others	Dec. 19, 1994.			Aug. 8, 1988.
D039	Mixed with radioactive wastes	Sept.19, 1996.			Aug. 8, 1990.
D039	All others	Dec. 19, 1994.			Aug. 8, 1988.
D040	Mixed with radioactive wastes	Sept.19,			Aug. 8,

F028	All	1988. Aug. 8, 1988.	K021	Nonwastewater	Aug. 8, 1988.
F032	Mixed with radioactive wastes	May 12, 1999	K022	Wastewater	Aug. 8, 1990.
F032	All others	Aug. 12, 1997.	K022	Nonwastewater	Aug. 8, 1988.
F034	Mixed with radioactive wastes	May 12, 1999	K023	All	June 8, 1989.
F034	All others	Aug. 12, 1997.	K024	All	Aug. 8, 1988.
F035	Mixed with radioactive wastes	May 12, 1999.	K025	Wastewater	Aug. 8, 1990.
F035	All others	Aug. 12, 1997.	K025	Nonwastewater	Aug. 8, 1988.
F037	Not generated from surface impoundment cleanouts or closures	June 30, 1993.	K026	All	Aug. 8, 1990.
F037	Generated from surface impoundment cleanouts or closures	June 30, 1994.	K027	All	June 8, 1989.
F037	Mixed with radioactive wastes	June 30, 1994.	K028 (metals)	Nonwastewater	Aug. 8, 1990.
F038	Not generated from surface impoundment cleanouts or closures	June 30, 1993.	K028	All others	June 8, 1989.
F038	Mixed with radioactive wastes	June 30, 1994.	K029	Wastewater	Aug. 8, 1990.
F038	Mixed with radioactive wastes	June 30, 1994.	K029	Nonwastewater	June 8, 1989.
F039	Wastewater	Aug. 8, 1990.	K030	All	Aug. 8, 1988.
F039	Nonwastewater	May 8, 1992.	K031	Wastewater	Aug. 8, 1990.
K001	All	Aug. 8, 1988.	K031	Nonwastewater	May 8, 1992.
K001 (organics) ^b	All others	Aug. 8, 1988.	K032	All	Aug. 8, 1990.
K002	All	Aug. 8, 1990.	K033	All	Aug. 8, 1990.
K003	All	Aug. 8, 1990.	K034	All	Aug. 8, 1990.
K004	Wastewater	Aug. 8, 1990.	K035	All	Aug. 8, 1990.
K004	Nonwastewater	Aug. 8, 1988.	K036	Wastewater	Aug. 8, 1990.
K005	Wastewater	Aug. 8, 1990.	K036	Nonwastewater	Aug. 8, 1988.
K005	Nonwastewater	June 8, 1989.	K037 ^b	Wastewater	Aug. 8, 1988.
K006	All	Aug. 8, 1990.	K037	Nonwastewater	Aug. 8, 1988.
K007	Wastewater	Aug. 8, 1990.	K038	All	June 8, 1989.
K007	Nonwastewater	June 8, 1989.	K039	All	June 8, 1989.
K008	Wastewater	Aug. 8, 1990.	K040	All	June 8, 1989.
K008	Nonwastewater	Aug. 8, 1988.	K041	All	Aug. 8, 1990.
K009	All	June 8, 1989.	K042	All	Aug. 8, 1990.
K010	All	June 8, 1989.	K043	All	June 8, 1989.
K011	Wastewater	Aug. 8, 1990.	K044	All	Aug. 8, 1988.
K011	Nonwastewater	June 8, 1989.	K045	All	Aug. 8, 1988.
K013	Wastewater	Aug. 8, 1990.	K046 (Nonreactive)	Nonwastewater	Aug. 8, 1988.
K013	Nonwastewater	June 8, 1989.	K046	All others	Aug. 8, 1990.
K014	Wastewater	Aug. 8, 1990.	K047	All	Aug. 8, 1988.
K014	Nonwastewater	June 8, 1989.	K048	Wastewater	Aug. 8, 1990.
K015	Wastewater	Aug. 8, 1990.	K048	Nonwastewater	Nov. 8, 1990.
K015	Nonwastewater	Aug. 8, 1990.	K049	Wastewater	Aug. 8, 1990.
K016	All	Aug. 8, 1988.	K049	Nonwastewater	Nov. 8, 1990.
K017	All	Aug. 8, 1990.	K050	Wastewater	Aug. 8, 1990.
K018	All	Aug. 8, 1988.	K050	Nonwastewater	Nov. 8, 1990.
K019	All	Aug. 8, 1988.	K051	Wastewater	Aug. 8, 1990.
K020	All	Aug. 8, 1988.	K051	Nonwastewater	Nov. 8, 1990.
K021	Wastewater	Aug. 8, 1990.	K052	Wastewater	Aug. 8, 1990.
			K052	Nonwastewater	Nov. 8,

K060	Wastewater	1990. Aug. 8,	K108	Mixed with radioactive wastes	1992. June 30,
K060	Nonwastewater	1990. Aug. 8,	K108	All others	1994. Nov. 9,
K061	Wastewater	1988. Aug. 8,	K109	Mixed with radioactive wastes	1992. June 30,
K061	Nonwastewater	1990. June 30,	K109	All others	1994. Nov. 9,
K062	All	1992. Aug. 8,	K110	Mixed with radioactive wastes	1992. June 30,
K069 (Non- Calcium Sulfate)	Nonwastewater	1988. Aug. 8,	K110	All others	1994. Nov. 9,
K069	All others	1988. Aug. 8,	K111	Mixed with radioactive wastes	1992. June 30,
K071	All	1990. Aug. 8,	K111	All others	1994. Nov. 9,
K073	All	1990. Aug. 8,	K112	Mixed with radioactive wastes	1992. June 30,
K083	All	1990. Aug. 8,	K112	All others	1994. Nov. 9,
K084	Wastewater	1990. Aug. 8,	K113	All	1992. June 8,
K084	Nonwastewater	1990. May 8,	K114	All	1989. June 8,
K085	All	1992. Aug. 8,	K115	All	1989. June 8,
K086	All	1990. Aug. 8,	K116	All	1989. June 8,
K086 (organics) ^b	All others	1988. Aug. 8,	K117	Mixed with radioactive wastes	1989. June 30,
K086	All others	1988. Aug. 8,	K117	All others	1994. Nov. 9,
K087	All	1988. Aug. 8,	K118	Mixed with radioactive wastes	1992. June 30,
K088	All others	1988. Oct. 8,	K118	All others	1994. Nov. 9,
K088	All others	1997. Jan. 8,	K123	Mixed with radioactive wastes	1992. June 30,
K093	All	1997. June 8,	K123	All others	1994. Nov. 9,
K094	All	1989. June 8,	K124	Mixed with radioactive wastes	1992. June 30,
K095	Wastewater	1989. Aug. 8,	K124	All others	1994. Nov. 9,
K095	Nonwastewater	1990. June 8,	K125	Mixed with radioactive wastes	1992. June 30,
K096	Wastewater	1989. Aug. 8,	K125	All others	1994. Nov. 9,
K096	Nonwastewater	1990. June 8,	K126	Mixed with radioactive wastes	1992. June 30,
K097	All	1989. Aug. 8,	K126	All others	1994. Nov. 9,
K098	All	1990. Aug. 8,	K131	Mixed with radioactive wastes	1992. June 30,
K099	All	1990. Aug. 8,	K131	All others	1994. Nov. 9,
K100	Wastewater	1988. Aug. 8,	K132	Mixed with radioactive wastes	1992. June 30,
K100	Nonwastewater	1990. Aug. 8,	K132	All others	1994. Nov. 9,
K101	Wastewater	1988. Aug. 8,	K136	Mixed with radioactive wastes	1992. June 30,
K101 (organics)	Wastewater	1988. Aug. 8,	K136	All others	1994. Nov. 9,
K101 (metals)	Wastewater	1990. Aug. 8,	K141	Mixed with radioactive wastes	1992. Sep. 19,
K101 (organics)	Nonwastewater	1988. Aug. 8,	K141	All others	1996. Dec. 19,
K101 (metals)	Nonwastewater	1992. May 8,	K142	Mixed with radioactive wastes	1994. Sep. 19,
K102	Wastewater	1992. Aug. 8,	K142	All others	1996. Dec. 19,
K102 (organics)	Wastewater	1988. Aug. 8,	K142	Mixed with radioactive wastes	1994. Sep. 19,
K102 (metals)	Wastewater	1990. Aug. 8,	K143	Mixed with radioactive wastes	1996. Dec. 19,
K102	Nonwastewater	1990. Aug. 8,	K143	All others	1994. Sep. 19,
K102 (organics)	Nonwastewater	1988. May 8,	K143	Mixed with radioactive wastes	1996. Dec. 19,
K102 (metals)	Nonwastewater	1992. May 8,	K144	Mixed with radioactive wastes	1994. Sep. 19,
K103	All	1988. Aug. 8,	K144	All others	1996. Dec. 19,
K104	All	1988. Aug. 8,	K144	Mixed with radioactive wastes	1994. Sep. 19,
K105	All	1988. Aug. 8,	K145	Mixed with radioactive wastes	1996. Dec. 19,
K106	Wastewater	1990. Aug. 8,	K145	All others	1994. Dec. 19,
K106	Nonwastewater	1990. May 8,	K147	Mixed with radioactive wastes	1996. Sep. 19,
K107	Mixed with radioactive wastes	1992. June 30,	K147	All others	1994. Dec. 19,
K107	All others	1994. Nov. 9,			1994.

K148	Mixed with radioactive wastes	Sep. 19, 1996.	P023	All	1990.
K148	All others	Dec. 19, 1994.	P024	All	Aug. 8, 1990.
K149	Mixed with radioactive wastes	Sep. 19, 1996.	P026	All	Aug. 8, 1990.
K149	All others	Dec. 19, 1994.	P027	All	Aug. 8, 1990.
K150	Mixed with radioactive wastes	Sep. 19, 1996.	P028	All	Aug. 8, 1990.
K150	All others	Dec. 19, 1994.	P029	All	June 8, 1989.
K151	Mixed with radioactive wastes	Sep. 19, 1996.	P030	All	June 8, 1989.
K151	All others	Dec. 19, 1994.	P031	All	Aug. 8, 1990.
K156	Mixed with radioactive wastes	Apr. 8, 1998.	P033	All	Aug. 8, 1990.
K156	All others	July 8, 1996.	P034	All	Aug. 8, 1990.
K157	Mixed with radioactive wastes	Apr. 8, 1998.	P036	Wastewater	Aug. 8, 1990.
K157	All others	July 8, 1996.	P036	Nonwastewater	May 8, 1992.
K158	Mixed with radioactive wastes	Apr. 8, 1998.	P037	All	Aug. 8, 1990.
K158	All others	July 8, 1996.	P038	Wastewater	Aug. 8, 1990.
K159	Mixed with radioactive wastes	Apr. 8, 1998.	P038	Nonwastewater	May 8, 1992.
K159	All others	July 8, 1996.	P039	All	June 8, 1989.
K160	Mixed with radioactive wastes	Apr. 8, 1998.	P040	All	June 8, 1989.
K160	All others	July 8, 1996.	P041	All	June 8, 1989.
K161	Mixed with radioactive wastes	Apr. 8, 1998.	P042	All	Aug. 8, 1990.
K161	All others	July 8, 1996.	P043	All	June 8, 1989.
P001	All	Aug. 8, 1990.	P044	All	June 8, 1989.
P002	All	Aug. 8, 1990.	P045	All	Aug. 8, 1990.
P003	All	Aug. 8, 1990.	P046	All	Aug. 8, 1990.
P004	All	Aug. 8, 1990.	P047	All	Aug. 8, 1990.
P005	All	Aug. 8, 1990.	P048	All	Aug. 8, 1990.
P006	All	Aug. 8, 1990.	P049	All	Aug. 8, 1990.
P007	All	Aug. 8, 1990.	P050	All	Aug. 8, 1990.
P008	All	Aug. 8, 1990.	P051	All	Aug. 8, 1990.
P009	All	Aug. 8, 1990.	P054	All	Aug. 8, 1990.
P010	Wastewater	Aug. 8, 1990.	P056	All	Aug. 8, 1990.
P010	Nonwastewater	May 8, 1992.	P057	All	Aug. 8, 1990.
P011	Wastewater	Aug. 8, 1990.	P058	All	Aug. 8, 1990.
P011	Nonwastewater	May 8, 1992.	P059	All	Aug. 8, 1990.
P012	Wastewater	Aug. 8, 1990.	P060	All	Aug. 8, 1990.
P012	Nonwastewater	May 8, 1992.	P062	All	June 8, 1989.
P013 (barium)	Nonwastewater	Aug. 8, 1990.	P063	All	June 8, 1989.
P013	All others	June 8, 1989.	P064	All	Aug. 8, 1990.
P014	All	Aug. 8, 1990.	P065	Wastewater	Aug. 8, 1990.
P015	All	Aug. 8, 1990.	P065	Nonwastewater	May 8, 1992.
P016	All	Aug. 8, 1990.	P066	All	Aug. 8, 1990.
P017	All	Aug. 8, 1990.	P067	All	Aug. 8, 1990.
P018	All	Aug. 8, 1990.	P068	All	Aug. 8, 1990.
P020	All	Aug. 8, 1990.	P069	All	Aug. 8, 1990.
P021	All	June 8, 1989.	P070	All	Aug. 8, 1990.
P022	All	Aug. 8,			1990.

P071	All	June 8, 1989.	P122	All	1989.
P072	All	Aug. 8, 1990.	P123	All	Aug. 8, 1990.
P073	All	Aug. 8, 1990.	P127	Mixed with radioactive wastes	Apr. 8, 1998.
P074	All	June 8, 1989.	P127	All others	July 8, 1996.
P075	All	Aug. 8, 1990.	P128	Mixed with radioactive wastes	Apr. 8, 1998.
P076	All	Aug. 8, 1990.	P128	All others	July 8, 1996.
P077	All	Aug. 8, 1990.	P185	Mixed with radioactive wastes	Apr. 8, 1998.
P078	All	Aug. 8, 1990.	P185	All others	July 8, 1996.
P081	All	Aug. 8, 1990.	P188	Mixed with radioactive wastes	Apr. 8, 1998.
P082	All	Aug. 8, 1990.	P188	All others	July 8, 1996.
P084	All	Aug. 8, 1990.	P189	Mixed with radioactive wastes	Apr. 8, 1998.
P085	All	June 8, 1989.	P189	All others	July 8, 1996.
P087	All	May 8, 1992.	P190	Mixed with radioactive wastes	Apr. 8, 1998.
P088	All	Aug. 8, 1990.	P190	All others	July 8, 1996.
P089	All	June 8, 1989.	P191	Mixed with radioactive wastes	Apr. 8, 1998.
P092	Wastewater	Aug. 8, 1990.	P191	All others	July 8, 1996.
P092	Nonwastewater	May 8, 1992.	P192	Mixed with radioactive wastes	Apr. 8, 1998.
P093	All	Aug. 8, 1990.	P192	All others	July 8, 1996.
P094	All	June 8, 1989.	P194	Mixed with radioactive wastes	Apr. 8, 1998.
P095	All	Aug. 8, 1990.	P194	All others	July 8, 1996.
P096	All	Aug. 8, 1990.	P196	Mixed with radioactive wastes	Apr. 8, 1998.
P097	All	June 8, 1989.	P196	All others	July 8, 1996.
P098	All	June 8, 1989.	P197	Mixed with radioactive wastes	Apr. 8, 1998.
P099 (silver)	Wastewater	Aug. 8, 1990.	P197	All others	July 8, 1996.
P099	All others	June 8, 1989.	P198	Mixed with radioactive wastes	Apr. 8, 1998.
P101	All	Aug. 8, 1990.	P198	All others	July 8, 1996.
P102	All	Aug. 8, 1990.	P199	Mixed with radioactive wastes	Apr. 8, 1998.
P103	All	Aug. 8, 1990.	P199	All others	July 8, 1996.
P104 (silver)	Wastewater	Aug. 8, 1990.	P201	Mixed with radioactive wastes	Apr. 8, 1998.
P104	All others	June 8, 1989.	P201	All others	July 8, 1996.
P105	All	Aug. 8, 1990.	P202	Mixed with radioactive wastes	Apr. 8, 1998.
P106	All	June 8, 1989.	P202	All others	July 8, 1996.
P108	All	Aug. 8, 1990.	P203	Mixed with radioactive wastes	Apr. 8, 1998.
P109	All	June 8, 1989.	P203	All others	July 8, 1996.
P110	All	Aug. 8, 1990.	P204	Mixed with radioactive wastes	Apr. 8, 1998.
P111	All	June 8, 1989.	P204	All others	July 8, 1996.
P112	All	Aug. 8, 1990.	P205	Mixed with radioactive wastes	Apr. 8, 1998.
P113	All	Aug. 8, 1990.	P205	All others	July 8, 1996.
P114	All	Aug. 8, 1990.	U001	All	Aug. 8, 1990.
P115	All	Aug. 8, 1990.	U002	All	Aug. 8, 1990.
P116	All	Aug. 8, 1990.	U003	All	Aug. 8, 1990.
P118	All	Aug. 8, 1990.	U004	All	Aug. 8, 1990.
P119	All	Aug. 8, 1990.	U005	All	Aug. 8, 1990.
P120	All	Aug. 8, 1990.	U006	All	Aug. 8, 1990.
P121	All	June 8,			

U007	A11	Aug. 8, 1990.	U055	A11	1990.
U008	A11	Aug. 8, 1990.	U056	A11	Aug. 8, 1990.
U009	A11	Aug. 8, 1990.	U057	A11	Aug. 8, 1990.
U010	A11	Aug. 8, 1990.	U058	A11	Aug. 8, 1990.
U011	A11	Aug. 8, 1990.	U059	A11	June 8, 1989.
U012	A11	Aug. 8, 1990.	U060	A11	Aug. 8, 1990.
U014	A11	Aug. 8, 1990.	U061	A11	Aug. 8, 1990.
U015	A11	Aug. 8, 1990.	U062	A11	Aug. 8, 1990.
U016	A11	Aug. 8, 1990.	U063	A11	Aug. 8, 1990.
U017	A11	Aug. 8, 1990.	U064	A11	Aug. 8, 1990.
U018	A11	Aug. 8, 1990.	U066	A11	Aug. 8, 1990.
U019	A11	Aug. 8, 1990.	U067	A11	Aug. 8, 1990.
U020	A11	Aug. 8, 1990.	U068	A11	Aug. 8, 1990.
U021	A11	Aug. 8, 1990.	U069	A11	June 30, 1992.
U022	A11	Aug. 8, 1990.	U070	A11	Aug. 8, 1990.
U023	A11	Aug. 8, 1990.	U071	A11	Aug. 8, 1990.
U024	A11	Aug. 8, 1990.	U072	A11	Aug. 8, 1990.
U025	A11	Aug. 8, 1990.	U073	A11	Aug. 8, 1990.
U026	A11	Aug. 8, 1990.	U074	A11	Aug. 8, 1990.
U027	A11	Aug. 8, 1990.	U075	A11	Aug. 8, 1990.
U028	A11	June 8, 1989.	U076	A11	Aug. 8, 1990.
U029	A11	Aug. 8, 1990.	U077	A11	Aug. 8, 1990.
U030	A11	Aug. 8, 1990.	U078	A11	Aug. 8, 1990.
U031	A11	Aug. 8, 1990.	U079	A11	Aug. 8, 1990.
U032	A11	Aug. 8, 1990.	U080	A11	Aug. 8, 1990.
U033	A11	Aug. 8, 1990.	U081	A11	Aug. 8, 1990.
U034	A11	Aug. 8, 1990.	U082	A11	Aug. 8, 1990.
U035	A11	Aug. 8, 1990.	U083	A11	Aug. 8, 1990.
U036	A11	Aug. 8, 1990.	U084	A11	Aug. 8, 1990.
U037	A11	Aug. 8, 1990.	U085	A11	Aug. 8, 1990.
U038	A11	Aug. 8, 1990.	U086	A11	Aug. 8, 1990.
U039	A11	Aug. 8, 1990.	U087	A11	Aug. 8, 1990.
U041	A11	Aug. 8, 1990.	U088	A11	June 8, 1989.
U042	A11	Aug. 8, 1990.	U089	A11	June 8, 1989.
U043	A11	Aug. 8, 1990.	U090	A11	Aug. 8, 1990.
U044	A11	Aug. 8, 1990.	U091	A11	Aug. 8, 1990.
U045	A11	Aug. 8, 1990.	U092	A11	Aug. 8, 1990.
U046	A11	Aug. 8, 1990.	U093	A11	Aug. 8, 1990.
U047	A11	Aug. 8, 1990.	U094	A11	Aug. 8, 1990.
U048	A11	Aug. 8, 1990.	U095	A11	Aug. 8, 1990.
U049	A11	Aug. 8, 1990.	U096	A11	Aug. 8, 1990.
U050	A11	Aug. 8, 1990.	U097	A11	Aug. 8, 1990.
U051	A11	Aug. 8, 1990.	U098	A11	Aug. 8, 1990.
U052	A11	Aug. 8, 1990.	U099	A11	Aug. 8, 1990.
U053	A11	Aug. 8,			1990.

U101	A11	Aug. 8, 1990.	U147	A11	1990.
U102	A11	June 8, 1989.	U148	A11	Aug. 8, 1990.
U103	A11	Aug. 8, 1990.	U149	A11	Aug. 8, 1990.
U105	A11	Aug. 8, 1990.	U150	A11	Aug. 8, 1990.
U106	A11	Aug. 8, 1990.	U151	Wastewater	Aug. 8, 1990.
U107	A11	June 8, 1989.	U151	Nonwastewater	May 8, 1992.
U108	A11	Aug. 8, 1990.	U152	A11	Aug. 8, 1990.
U109	A11	Aug. 8, 1990.	U153	A11	Aug. 8, 1990.
U110	A11	Aug. 8, 1990.	U154	A11	Aug. 8, 1990.
U111	A11	Aug. 8, 1990.	U155	A11	Aug. 8, 1990.
U112	A11	Aug. 8, 1990.	U156	A11	Aug. 8, 1990.
U113	A11	Aug. 8, 1990.	U157	A11	Aug. 8, 1990.
U114	A11	Aug. 8, 1990.	U158	A11	Aug. 8, 1990.
U115	A11	Aug. 8, 1990.	U159	A11	Aug. 8, 1990.
U116	A11	Aug. 8, 1990.	U160	A11	Aug. 8, 1990.
U117	A11	Aug. 8, 1990.	U161	A11	Aug. 8, 1990.
U118	A11	Aug. 8, 1990.	U162	A11	Aug. 8, 1990.
U119	A11	Aug. 8, 1990.	U163	A11	Aug. 8, 1990.
U120	A11	Aug. 8, 1990.	U164	A11	Aug. 8, 1990.
U121	A11	Aug. 8, 1990.	U165	A11	Aug. 8, 1990.
U122	A11	Aug. 8, 1990.	U166	A11	Aug. 8, 1990.
U123	A11	Aug. 8, 1990.	U167	A11	Aug. 8, 1990.
U124	A11	Aug. 8, 1990.	U168	A11	Aug. 8, 1990.
U125	A11	Aug. 8, 1990.	U169	A11	Aug. 8, 1990.
U126	A11	Aug. 8, 1990.	U170	A11	Aug. 8, 1990.
U127	A11	Aug. 8, 1990.	U171	A11	Aug. 8, 1990.
U128	A11	Aug. 8, 1990.	U172	A11	Aug. 8, 1990.
U129	A11	Aug. 8, 1990.	U173	A11	Aug. 8, 1990.
U130	A11	Aug. 8, 1990.	U174	A11	Aug. 8, 1990.
U131	A11	Aug. 8, 1990.	U176	A11	Aug. 8, 1990.
U132	A11	Aug. 8, 1990.	U177	A11	Aug. 8, 1990.
U133	A11	Aug. 8, 1990.	U178	A11	Aug. 8, 1990.
U134	A11	Aug. 8, 1990.	U179	A11	Aug. 8, 1990.
U135	A11	Aug. 8, 1990.	U180	A11	Aug. 8, 1990.
U136	Wastewater	Aug. 8, 1990.	U181	A11	Aug. 8, 1990.
U136	Nonwastewater	May 8, 1992.	U182	A11	Aug. 8, 1990.
U137	A11	Aug. 8, 1990.	U183	A11	Aug. 8, 1990.
U138	A11	Aug. 8, 1990.	U184	A11	Aug. 8, 1990.
U140	A11	Aug. 8, 1990.	U185	A11	Aug. 8, 1990.
U141	A11	Aug. 8, 1990.	U186	A11	Aug. 8, 1990.
U142	A11	Aug. 8, 1990.	U187	A11	Aug. 8, 1990.
U143	A11	Aug. 8, 1990.	U188	A11	Aug. 8, 1990.
U144	A11	Aug. 8, 1990.	U189	A11	Aug. 8, 1990.
U145	A11	Aug. 8, 1990.	U190	A11	June 8, 1989.
U146	A11	Aug. 8,			

U191	A11	Aug. 8, 1990.	U271	Mixed with radioactive wastes	1990.
U192	A11	Aug. 8, 1990.	U271	All others	Apr. 8, 1998.
U193	A11	Aug. 8, 1990.	U277	Mixed with radioactive wastes	July 8, 1996.
U194	A11	June 8, 1989.	U277	All others	Apr. 8, 1998.
U196	A11	Aug. 8, 1990.	U278	Mixed with radioactive wastes	July 8, 1996.
U197	A11	Aug. 8, 1990.	U278	All others	Apr. 8, 1998.
U200	A11	Aug. 8, 1990.	U279	Mixed with radioactive wastes	July 8, 1996.
U201	A11	Aug. 8, 1990.	U279	All others	Apr. 8, 1998.
U203	A11	Aug. 8, 1990.	U280	Mixed with radioactive wastes	July 8, 1996.
U204	A11	Aug. 8, 1990.	U280	All others	Apr. 8, 1998.
U205	A11	Aug. 8, 1990.	U328	Mixed with radioactive wastes	July 8, 1996.
U206	A11	Aug. 8, 1990.	U328	All others	June 30, 1994.
U207	A11	Aug. 8, 1990.	U353	Mixed with radioactive wastes	Nov. 9, 1992.
U208	A11	Aug. 8, 1990.	U353	All others	June 30, 1994.
U209	A11	Aug. 8, 1990.	U359	Mixed with radioactive wastes	Nov. 9, 1992.
U210	A11	Aug. 8, 1990.	U359	All others	June 30, 1994.
U211	A11	Aug. 8, 1990.	U364	Mixed with radioactive wastes	Nov. 9, 1992.
U213	A11	Aug. 8, 1990.	U364	All others	Apr. 8, 1998.
U214	A11	Aug. 8, 1990.	U365	Mixed with radioactive wastes	July 8, 1996.
U215	A11	Aug. 8, 1990.	U365	All others	Apr. 8, 1998.
U216	A11	Aug. 8, 1990.	U366	Mixed with radioactive wastes	July 8, 1996.
U217	A11	Aug. 8, 1990.	U366	All others	Apr. 8, 1998.
U218	A11	Aug. 8, 1990.	U367	Mixed with radioactive wastes	July 8, 1996.
U219	A11	Aug. 8, 1990.	U367	All others	Apr. 8, 1998.
U220	A11	Aug. 8, 1990.	U372	Mixed with radioactive wastes	July 8, 1996.
U221	A11	June 8, 1989.	U372	All others	Apr. 8, 1998.
U222	A11	Aug. 8, 1990.	U373	Mixed with radioactive wastes	July 8, 1996.
U223	A11	June 8, 1989.	U373	All others	Apr. 8, 1998.
U225	A11	Aug. 8, 1990.	U375	Mixed with radioactive wastes	July 8, 1996.
U226	A11	Aug. 8, 1990.	U375	All others	Apr. 8, 1998.
U227	A11	Aug. 8, 1990.	U376	Mixed with radioactive wastes	July 8, 1996.
U228	A11	Aug. 8, 1990.	U376	All others	Apr. 8, 1998.
U234	A11	Aug. 8, 1990.	U377	Mixed with radioactive wastes	July 8, 1996.
U235	A11	June 8, 1989.	U377	All others	Apr. 8, 1998.
U236	A11	Aug. 8, 1990.	U378	Mixed with radioactive wastes	July 8, 1996.
U237	A11	Aug. 8, 1990.	U378	All others	Apr. 8, 1998.
U238	A11	Aug. 8, 1990.	U379	Mixed with radioactive wastes	July 8, 1996.
U239	A11	Aug. 8, 1990.	U379	All others	Apr. 8, 1998.
U240	A11	Aug. 8, 1990.	U381	Mixed with radioactive wastes	July 8, 1996.
U243	A11	Aug. 8, 1990.	U381	All others	Apr. 8, 1998.
U244	A11	Aug. 8, 1990.	U382	Mixed with radioactive wastes	July 8, 1996.
U246	A11	Aug. 8, 1990.	U382	All others	Apr. 8, 1998.
U247	A11	Aug. 8, 1990.	U383	Mixed with radioactive wastes	July 8, 1996.
U248	A11	Aug. 8, 1990.	U383	All others	Apr. 8, 1998.
U249	A11	Aug. 8,			July 8, 1996.

U384	Mixed with radioactive wastes	Apr. 8, 1998.
U384	All others	July 8, 1996.
U385	Mixed with radioactive wastes	Apr. 8, 1998.
U385	All others	July 8, 1996.
U386	Mixed with radioactive wastes	Apr. 8, 1998.
U386	All others	July 8, 1996.
U387	Mixed with radioactive wastes	Apr. 8, 1998.
U387	All others	July 8, 1996.
U389	Mixed with radioactive wastes	Apr. 8, 1998.
U389	All others	July 8, 1996.
U390	Mixed with radioactive wastes	Apr. 8, 1998.
U390	All others	July 8, 1996.
U391	Mixed with radioactive wastes	Apr. 8, 1998.
U391	All others	July 8, 1996.
U392	Mixed with radioactive wastes	Apr. 8, 1998.
U392	All others	July 8, 1996.
U393	Mixed with radioactive wastes	Apr. 8, 1998.
U393	All others	July 8, 1996.
U394	Mixed with radioactive wastes	Apr. 8, 1998.
U394	All others	July 8, 1996.
U395	Mixed with radioactive wastes	Apr. 8, 1998.
U395	All others	July 8, 1996.
U396	Mixed with radioactive wastes	Apr. 8, 1998.
U396	All others	July 8, 1996.
U400	Mixed with radioactive wastes	Apr. 8, 1998.
U400	All others	July 8, 1996.
U401	Mixed with radioactive wastes	Apr. 8, 1998.
U401	All others	July 8, 1996.
U402	Mixed with radioactive wastes	Apr. 8, 1998.
U402	All others	July 8, 1996.
U403	Mixed with radioactive wastes	Apr. 8, 1998.
U403	All others	July 8, 1996.
U404	Mixed with radioactive wastes	Apr. 8, 1998.
U404	All others	July 8, 1996.
U407	Mixed with radioactive wastes	Apr. 8, 1998.
U407	All others	July 8, 1996.
U409	Mixed with radioactive wastes	Apr. 8, 1998.
U409	All others	July 8, 1996.
U410	Mixed with radioactive wastes	Apr. 8, 1998.
U410	All others	July 8, 1996.
U411	Mixed with radioactive wastes	Apr. 8, 1998.
U411	All others	July 8, 1996.

55 FR 22520, June 1, 1990.
^cThe standard was revised in the Third Third Emergency Rule, 58 FR 29860, May 24, 1993; the original effective date was August 8, 1990.
^dThe standard was revised in the Phase II Final Rule, 59 FR 47982, Sept. 19, 1994; the original effective date was August 8, 1990.
^eThe standards for selected reactive wastes was revised in the Phase III Final Rule, 61 FR 15566, Apr. 8, 1996; the original effective date was August 8, 1990.

Table 2

Summary of Effective Dates of Land Disposal Restrictions for Contaminated Soil and Debris (CSD)

Restricted hazardous waste in CSD	Effective date
1. Solvent-(F001-F005) and dioxin-(F020-F023 and F026-F028) containing soil and debris from CERCLA response or RCRA corrective actions	Nov. 8, 1990.
2. Soil and debris not from CERCLA response or RCRA corrective actions contaminated with less than 1% total solvents (F001-F005) or dioxins (F020-F023 and F026-F028)	Nov. 8, 1988.
3. All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration	Aug. 8, 1990.
4. All soil and debris contaminated with Second Third wastes for which treatment standards are based on incineration	June 8, 1991.
5. All soil and debris contaminated with Third Third wastes or, First or Second Third "soft hammer" wastes which had treatment standards promulgated in the Third Third rule, for which treatment standards are based on incineration, vitrification, or mercury retorting, acid leaching followed by chemical precipitation, or thermal recovery of metals; as well as all inorganic solids debris contaminated with D004-D011 wastes, and all soil and debris contaminated with mixed RCRA/radioactive wastes	May 8, 1992.
6. Soil and debris contaminated with D012-D043, K141-K145, and K147-151 wastes	Dec. 19, 1994.
7. Debris (only) contaminated with F037, F038, K107-K112, K117, K118, K123-K126, K131, K132, K136, U328, U353, U359	Dec. 19, 1994.
8. Soil and debris contaminated with K156-K161, P127, P128, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 wastes	July 8, 1996.
9. Soil and debris contaminated with K088 wastes	Oct. 8, 1997.
10. Soil and debris contaminated with radioactive wastes mixed with K088, K156-K161, P127, P128, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 wastes	April 8, 1998.
11. Soil and debris contaminated with F032, F034, and F035	May 12, 1997.
12. Soil and debris contaminated with newly identified D004-D011 toxicity characteristic wastes and mineral processing wastes.	Aug. 24, 1998.
13. Soil and debris contaminated with mixed radioactive newly identified D004-D011 characteristic wastes and mineral processing wastes.	May 26, 2000.

^aThis table does not include mixed radioactive wastes, from the First, Second, and Third Third rules, which received national capacity variance until May 8, 1992. This table also does not include contaminated soil and debris wastes.
^bThe standard was revised in the Third Third Final Rule,

Note: Appendix VII is provided for the convenience of the reader.

R315-268-55. Appendix VIII to Rule R315-268 - LDR Effective Dates of Injected Prohibited Hazardous Wastes.

Table					
Waste code	Waste category	Effective date			
National Capacity LDR Variances for UIC Wastes ^a			D039	wastes	1998.
				All, including mixed radioactive wastes	Apr. 8, 1998.
			D040	All, including mixed radioactive wastes	Apr. 8, 1998.
			D041	All, including mixed radioactive wastes	Apr. 8, 1998.
F001-F005	All spent F001-F005 solvent containing less than 1 percent total F001-F005 solvent constituents	Aug. 8, 1990.	D042	All, including mixed radioactive wastes	Apr. 8, 1998.
D001 (except High TOC Ignitable Liquids Subcategory) ^c	All	Feb. 10, 1994.	D043	All, including mixed radioactive wastes	Apr. 8, 1998.
D001 (High TOC Ignitable Characteristic Liquids Subcategory)	Nonwastewater	Sept.19, 1995.	F007	All	June 8, 1991.
D002 ^b	All	May 8, 1992.	F032	All, including mixed radioactive wastes	May 12, 1999.
D002 ^c	All	Feb. 10, 1994.	F034	All, including mixed radioactive wastes	May 12, 1999.
D003 (cyanides)	All	May 8, 1992.	F035	All, including mixed radioactive wastes	May 12, 1999.
D003 (sulfides)	All	May 8, 1992.	F037	All	Nov. 8, 1992.
D003 (explosives, reactives)	All	May 8, 1992.	F038	All	Nov. 8, 1992.
D007	All	May 8, 1992.	F039	Wastewater	May 8, 1992.
D009	Nonwastewater	May 8, 1992.	K009	Wastewater	June 8, 1991.
D012	All	Sept.19, 1995.	K011	Nonwastewater	June 8, 1991.
D013	All	Sept.19, 1995.	K011	Wastewater	May 8, 1992.
D014	All	Sept.19, 1995.	K013	Nonwastewater	June 8, 1991.
D015	All	Sept.19, 1995.	K013	Wastewater	May 8, 1992.
D016	All	Sept.19, 1995.	K014	All	May 8, 1992.
D017	All	Sept.19, 1995.	K016 (dilute)	All	June 8, 1991.
D018	All, including mixed with radioactive wastes	Apr. 8, 1998.	K049	All	Aug. 8, 1990.
D019	All, including mixed with radioactive wastes	Apr. 8, 1998.	K050	All	Aug. 8, 1990.
D020	All, including mixed with radioactive wastes	Apr. 8, 1998.	K051	All	Aug. 8, 1990.
D021	All, including mixed with radioactive wastes	Apr. 8, 1998.	K052	All	Aug. 8, 1990.
D022	All, including mixed with radioactive wastes	Apr. 8, 1998.	K062	All	Aug. 8, 1990.
D023	All, including mixed radioactive wastes	Apr. 8, 1998.	K071	All	Aug. 8, 1990.
D024	All, including mixed radioactive wastes	Apr. 8, 1998.	K088	All	Jan. 8, 1997.
D025	All, including mixed radioactive wastes	Apr. 8, 1998.	K104	All	Aug. 8, 1990.
D026	All, including mixed radioactive wastes	Apr. 8, 1998.	K107	All	Nov. 8, 1992.
D027	All, including mixed radioactive wastes	Apr. 8, 1998.	K108	All	Nov. 9, 1992.
D028	All, including mixed radioactive wastes	Apr. 8, 1998.	K109	All	Nov. 9, 1992.
D029	All, including mixed radioactive wastes	Apr. 8, 1998.	K110	All	Nov. 9, 1992.
D030	All, including mixed radioactive wastes	Apr. 8, 1998.	K111	All	Nov. 9, 1992.
D031	All, including mixed radioactive wastes	Apr. 8, 1998.	K112	All	Nov. 9, 1992.
D032	All, including mixed radioactive wastes	Apr. 8, 1998.	K117	All	June 30, 1995.
D033	All, including mixed radioactive wastes	Apr. 8, 1998.	K118	All	June 30, 1995.
D034	All, including mixed radioactive wastes	Apr. 8, 1998.	K123	All	Nov. 9, 1992.
D035	All, including mixed radioactive wastes	Apr. 8, 1998.	K124	All	Nov. 9, 1992.
D036	All, including mixed radioactive wastes	Apr. 8, 1998.	K125	All	Nov. 9, 1992.
D037	All, including mixed radioactive wastes	Apr. 8, 1998.	K126	All	Nov. 9, 1992.
D038	All, including mixed radioactive wastes	Apr. 8, 1998.	K131	All	June 30, 1995.
			K132	All	June 30, 1995.
			K136	All	Nov. 9, 1992.
			K141	All	Dec. 19, 1994.
			K142	All	Dec. 19, 1994.

K143	All	Dec. 19, 1994.	U366	All	1996. July 8,
K144	All	Dec. 19, 1994.	U367	All	1996. July 8,
K145	All	Dec. 19, 1994.	U372	All	1996. July 8,
K147	All	Dec. 19, 1994.	U373	All	1996. July 8,
K148	All	Dec. 19, 1994.	U375	All	1996. July 8,
K149	All	Dec. 19, 1994.	U376	All	1996. July 8,
K150	All	Dec. 19, 1994.	U377	All	1996. July 8,
K151	All	Dec. 19, 1994.	U378	All	1996. July 8,
K156	All	July 8, 1996.	U379	All	1996. July 8,
K157	All	July 8, 1996.	U381	All	1996. July 8,
K158	All	July 8, 1996.	U382	All	1996. July 8,
K159	All	July 8, 1996.	U383	All	1996. July 8,
K160	All	July 8, 1996.	U384	All	1996. July 8,
K161	All	July 8, 1996.	U385	All	1996. July 8,
NA	Newly identified mineral processing wastes from titanium dioxide production and mixed radioactive/newly identified D004-D011 characteristic wastes and mineral processing wastes.	May 26, 2000.	U386	All	1996. July 8,
			U387	All	1996. July 8,
P127	All	July 8, 1996.	U389	All	1996. July 8,
P128	All	July 8, 1996.	U390	All	1996. July 8,
P185	All	July 8, 1996.	U391	All	1996. July 8,
P188	All	July 8, 1996.	U392	All	1996. July 8,
P189	All	July 8, 1996.	U395	All	1996. July 8,
P190	All	July 8, 1996.	U396	All	1996. July 8,
P191	All	July 8, 1996.	U400	All	1996. July 8,
P192	All	July 8, 1996.	U401	All	1996. July 8,
P194	All	July 8, 1996.	U402	All	1996. July 8,
P196	All	July 8, 1996.	U403	All	1996. July 8,
P197	All	July 8, 1996.	U404	All	1996. July 8,
P198	All	July 8, 1996.	U407	All	1996. July 8,
P199	All	July 8, 1996.	U409	All	1996. July 8,
P201	All	July 8, 1996.	U410	All	1996. July 8,
P202	All	July 8, 1996.	U411	All	1996. July 8,
P203	All	July 8, 1996.			
P204	All	July 8, 1996.			
P205	All	July 8, 1996.			
U271	All	July 8, 1996.			
U277	All	July 8, 1996.			
U278	All	July 8, 1996.			
U279	All	July 8, 1996.			
U280	All	July 8, 1996.			
U328	All	Nov. 9, 1992.			
U353	All	Nov. 9, 1992.			
U359	All	Nov. 9, 1992.			
U364	All	July 8, 1996.			
U365	All	July 8,			

^aWastes that are deep well disposed on-site receive a six-month variance, with restrictions effective in November 1990.
^bDeepwell injected D002 liquids with a pH less than 2 shall meet the California List treatment standards on August 8, 1990.
^cManaged in systems defined in 40 CFR 144.6(e) and 144.6(e) as Class V injection wells, that do not engage in CWA-equivalent treatment before injection.
 Note: This table is provided for the convenience of the reader.

R315-268-56. Appendix IX to Rule R315-268 - Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310B).

Note: The EP (Method 1310B) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11.

R315-268-57. Appendix XI to Rule R315-268-Metal Bearing Wastes Prohibited from Dilution in a Combustion Unit According to Subsection R315-268-3(c).

Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit According to Subsection R315-268-3(c)¹

Table

Waste code	Waste description
D004	Toxicity Characteristic for Arsenic.
D005	Toxicity Characteristic for Barium.
D006	Toxicity Characteristic for Cadmium.
D007	Toxicity Characteristic for Chromium.
D008	Toxicity Characteristic for Lead.
D009	Toxicity Characteristic for Mercury.
D010	Toxicity Characteristic for Selenium.
D011	Toxicity Characteristic for Silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-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.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments, anhydrous and hydrated.
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H_3AsO_4
P011	Arsenic oxide As_2O_5
P012	Arsenic trioxide
P013	Barium cyanide
P015	Beryllium
P029	Copper cyanide $Cu(CN)$
P074	Nickel cyanide $Ni(CN)_2$
P087	Osmium tetroxide
P099	Potassium silver cyanide
P104	Silver cyanide
P113	Thallic oxide
P114	Thallium (I) selenite
P115	Thallium (I) sulfate
P119	Ammonium vanadate
P120	Vanadium oxide V_2O_5
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.U205 Selenium disulfide.

U216 Thallium (I) chloride.
 U217 Thallium (I) nitrate.
¹A combustion unit is defined as any thermal technology subject to Sections R315-264-340 through 351; 40 CFR 265.340 through 352, which are adopted by reference; and/or Sections R315-266-100 through 112.

**KEY: hazardous waste, land disposal restrictions
 August 31, 2017**

**19-6-105
 19-6-106**

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-270. Hazardous Waste Permit Program.

R315-270-1. Hazardous Waste Permit Program – Purpose and Scope of These Rules.

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Director for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit as required by Section R315-270-1 and Section 19-6-108 for that facility, may continue to operate that facility without violating Section R315-270-1 until such time as the permit is approved or disapproved pursuant to Section R315-270-1.

(b)(1) The Director shall review each proposed hazardous waste permit application to determine whether the application will be in accord with the provisions of Rules R315-260 through 266, 268, 270 and 273, and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the Director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Director as required by Rule R315-270.

(2) Any permit application which does not meet the requirements of Rules 315-260 through 266, 268 270 and 273 shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the Director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Director for a decision or seek judicial relief requiring a decision of approval or disapproval.

(3) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the Director sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the Director gives notice to a particular facility that it shall submit part B of the application.

(c) Scope of the hazardous waste permit requirement. Section 19-6-108 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in Rule R315-261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in Section R315-270-2. Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to 40 CFR 265.115, which is adopted by reference, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections R315-270-1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection R315-270-1(c)(7). If a post-closure permit is required, the permit shall address applicable Rule R315-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of

a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under Section R315-270-1.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a Utah or Federal UIC permit, shall be deemed to have a "permit by rule" for the injection well itself if they comply with the requirements of Subsection R315-270-60(b).

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a "permit by rule" for that waste if they comply with the requirements of Section R315-270-60(c).

(2) Specific exclusions and exemptions. The following persons are among those who are not required to obtain a hazardous waste permit:

(i) Generators who accumulate hazardous waste on-site in compliance with all of the conditions for exemption provided in Sections R315-262-14, R315-262-15, R315-262-16, and R315-262-17.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in Section R315-262-70;

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under Rule R315-270 by Section R315-261-4 or Section R315-262-14, very small quantity generator exemption.

(iv) Owners or operators of totally enclosed treatment facilities as defined in Section R315-260-10.

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section R315-260-10.

(vi) Transporters 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.

(vii) Persons adding absorbent material to waste in a container, as defined in Section R315-260-10, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsection R315-264-17(b) and Sections R315-264-171, and 172 are complied with.

(viii) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, managing the wastes listed below. These handlers 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.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Rule R315-270 for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the

dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The Director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Rule R315-265 standards shall obtain a post-closure permit unless they can demonstrate to the Director that the closure met the standards for closure by removal or decontamination in Section R315-264-228, Subsection R315-264-280(e), or Section R315-264-258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Rule R315-264 closure by removal standards were met. If the Director believes that Rule R315-264 standards were met, The Director shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in Subsection R315-270-1(c)(6).

(ii) If the owner/operator has not submitted a part B application for a post-closure permit, the owner/operator may petition the Director for a determination that a post-closure permit is not required because the closure met the applicable Rule R315-264 closure standards.

(A) The petition shall include data demonstrating that closure by removal or decontamination standards of Rule R315-264 were met.

(B) The Director shall approve or deny the petition according to the procedures outlined in Subsection R315-270-1(c)(6).

(6) Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under Subsection R315-270-1(c)(5), the Director shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Director shall also, in response to a request or at the Director's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Rule R315-265 closure to a Rule R315-264 closure. 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.

(ii) The Director shall determine whether the Rule R315-265 closure met the Rule R315-264 closure by removal or decontamination requirements within 90 days of its receipt. If the Director finds that the closure did not meet the applicable Rule R315-264 standards, the Director shall provide the owner/operator with a written statement of the reasons why the closure failed to meet Rule R315-264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Director shall review any additional information submitted and make a final determination within 60 days.

(iii) If the Director determines that the facility did not close in accordance with Rule R315-264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 CFR 265.121, which is adopted by reference. "Enforceable document" means an order, a permit, or other document issued by the Director including, but not limited to, a corrective action order issued by EPA under section 3008(h), a

CERCLA remedial action, or a closure or post-closure permit.

R315-270-2. Hazardous Waste Permit Program -- Definitions.

The following definitions apply to Rules R315-270 and 124. Terms not defined in Section R315-270-2 have the meaning given by Section R315-260-10 and Section 19-6-102.

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(b) "Application" means the information required by the Director under Section R315-270-14 through 29.

(c) "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(d) "Closure" means the act of securing a Hazardous Waste Management facility pursuant to the requirements of Rule R315-264.

(e) "Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function, e.g., a pump seal, pump, kiln liner, kiln thermocouple.

(f) "Corrective Action Management Unit" or CAMU means an area within a facility that is designated by the Director under Sections R315-264-550 through 555 for the purpose of implementing corrective action requirements under Section R315-264-101 and RCRA section 3008(h). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(g) "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 92-217 and Pub. L. 95-576; 33 U.S.C. 1251 et seq.

(h) "Director" means the Director of the Division of Waste Management and Radiation Control.

(i) "Disposal" has the meaning as found in Section 19-6-102.

(j) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(k) "Draft permit" means a document prepared under Section R315-124-6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Section R315-124-5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Section R315-124-5 is not a "draft permit." A proposed permit is not a draft permit.

(l) "Elementary neutralization unit" means a device which:

(1) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or are listed in Sections R315-261-30 through 35 only for this reason; and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Section R315-260-10.

(m) "Emergency permit" means a permit issued in accordance with Section R315-270-61.

(n) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(o) "EPA" means the United States Environmental Protection Agency.

(p) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(2)(i) A continuous on-site, physical construction program has

begun; or

(ii) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

(q) "Facility mailing list" means the mailing list for a facility maintained by the Director in accordance with Subsection R315-124-10(c)(1)(ix).

(r) "Facility" or "activity" means any HWM facility or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under Sections 19-6-101 through 125.

(s) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(t) "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(u) "Generator" means any person, by site location, whose act, or process produces "hazardous waste" identified or listed in Rule R315-261.

(v) "Ground water" means water below the land surface in a zone of saturation.

(w) "Hazardous waste" means a hazardous waste as defined in Section 19-6-102 and further defined in Section R315-261-3.

(x) "Hazardous Waste Management facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units, for example, one or more landfills, surface impoundments, or combinations of them.

(y) "HWM facility" means Hazardous Waste Management facility.

(z) "Injection well" means a well into which fluids are being injected.

(aa) "In operation" means a facility which is treating, storing, or disposing of hazardous waste.

(bb) "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.

(cc) "Manifest" means the shipping document originated and signed by the generator which contains the information required by Sections R315-262-20 through 27.

(dd) "National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an approved program.

(ee) "NPDES" means National Pollutant Discharge Elimination System.

(ff) "New HWM facility" means a Hazardous Waste Management facility which began operation or for which construction commenced after November 19, 1980.

(gg) "Off-site" means any site which is not on-site.

(hh) "On-site" means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided 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(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

(ii) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under Sections 19-6-101 through 125.

(jj) "Permit" means an operation plan under Section 19-6-108 to implement the requirements of Rules R315-270 and 124. Permit includes permit by rule, Section R315-270-60, and emergency

permit, Section R315-270-61. Permit does not include interim status, Sections R315-270-70 through 73, or any permit which has not been the subject of final action by the Director, such as a draft permit or a proposed permit.

(kk) "Permit-by-rule" means a provision of these rules stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

(ll) "Person" means person as defined in Subsection 19-1-103(4).

(mm) "Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

(nn) "POTW" means publicly owned treatment works.

(oo) "Publicly owned treatment works" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(pp) "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 U.S.C. 6901 et seq.

(qq) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(rr) "Remedial Action Plan" (RAP) means a special form of permit that a facility owner or operator may obtain instead of a permit issued under Sections R315-270-3 through 66, to authorize the treatment, storage or disposal of hazardous remediation waste, as defined in Section R315-260-10, at a remediation waste management site.

(ss) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, for example, actions, operations, or milestone events, leading to compliance with Sections 19-6-101 through 125 and rules adopted thereunder.

(tt) "SDWA" means the Safe Drinking Water Act, Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 3001 et seq.

(uu) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(vv) "State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(ww) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(xx) "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(yy) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(zz) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(aaa) "UIC" means the Underground Injection Control Program under part C of the Safe Drinking Water Act, including an approved program.

(bbb) "Underground injection" means a well injection.

(ccc) "Underground source of drinking water" means an

aquifer or its portion:

- (1)(i) Which supplies any public water system; or
- (ii) Which contains a sufficient quantity of ground water to supply a public water system; and
 - (A) Currently supplies drinking water for human consumption; or
 - (B) Contains fewer than 10,000 mg/l total dissolved solids; and
- (2) Which is not an exempted aquifer.
- (ddd) "USDW" means underground source of drinking water.
- (eee) "Wastewater treatment unit" means a device which:
 - (1) Is part of a wastewater treatment facility which is subject to regulation under Rule R317-1 through 15; and
 - (2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in Section R315-261-3, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and
 - (3) Meets the definition of tank or tank system in Section R315-260-10.

R315-270-4. Hazardous Waste Permit Program – Effect of a Permit.

- (a)(1) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Rules R315-260 through 266, 268, 270 and 124 except for those requirements not included in the permit which:
 - (i) Become effective by statute;
 - (ii) Are promulgated under Rule R315-268 restricting the placement of hazardous wastes in or on the land;
 - (iii) Are promulgated under Rule R315-264 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and shall be implemented through the procedures of Section R315-270-42 Class 1 permit modifications; or
 - (iv) Are promulgated under 40 CFR 265.1030 through 1035, 1050 through 1064, or 1080 through 1090, which are adopted by reference limiting air emissions.
- (2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections R315-270-41 and 43, or the permit may be modified upon the request of the permittee as set forth in Section R315-270-42.
- (b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
- (c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

R315-270-10. Hazardous Waste Permit Program – General Application Requirements.

- (a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:
 - (1) If you are covered by permits by rule, Section R315-270-60, you need not apply.
 - (2) If you currently have interim status, you shall apply for permits when required by the Director.
 - (3) If you are required to have a permit, including new applicants and permittees with expiring permits, you shall complete, sign, and submit an application to the Director, as described in Section R315-270-10 and Sections R315-270-70 through 73.
 - (4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in Section R315-270-61.
 - (5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and

administration are found exclusively in Section R315-270-65.

- (b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner shall also sign the permit application.
- (c) Completeness.
 - (1) The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to the Director's satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in Subsection R315-270-10(j). The Director may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.
 - (2) The Director shall review for completeness every permit application. Each permit application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Director shall notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the Director shall list the information necessary to make the permit application complete. When the permit application is for an existing hazardous waste management facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Director shall notify the applicant that the permit application is complete upon receiving this information. After the permit application is complete, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.
 - (3) If an applicant fails or refuses to correct deficiencies in the permit application, the permit application may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.
 - (d) Information requirements. All applicants for permits shall provide information set forth in Section R315-270-13 and applicable sections in Sections R315-270-14 through 29 to the Director, using the application form provided by the Director, if the Director has made such forms available.
 - (e) Existing HWM facilities and interim status qualifications.
 - (1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under Sections 19-6-101 through 125 that render the facility subject to the requirement to have a permit shall submit part A of their permit application no later than:
 - (i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in Rules R315-265 or 266, or
 - (ii) Thirty days after the date they first become subject to the standards set forth in Rules R315-265 or 266, whichever first occurs.
 - (iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.
 - (2) Reserved
 - (3) The Director may by compliance order extend the date by which the owner and operator of an existing hazardous waste management facility shall submit part A of their permit application.
 - (4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The Director may require submission of part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or

operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility shall submit a part B permit application in accordance with the dates specified in Section R315-270-73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under Sections 19-6-101 through 125 that render the facility subject to the requirement to have a permit shall submit a part B application in accordance with the dates specified in Section R315-270-73.

(5) Failure to furnish a requested part B application on time, or to furnish in full the information required by the part B application, is grounds for termination of interim status under Rule R315-124.

(f) New HWM facilities.

(1) Except as provided in Subsection R315-270-10(f)(3), no person shall begin physical construction of a new HWM facility without having submitted parts A and B of the permit application and having received a finally effective permit.

(2) An application for a permit for a new hazardous waste management facility, including both Parts A and B, may be filed any time after promulgation of those standards in Sections R315-264-170 through 1202 applicable to such facility. The application shall be filed with the Director. Except as provided in Subsection R315-270-10(f)(3), all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding Subsection R315-270-10(f)(1), the owner or operator of a facility approved for the incineration of polychlorinated biphenyls may, at any time after construction or operation of such facility has begun, file an application for a permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under Rule R315-261.

(g) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Director, within six months after the promulgation of revised regulations under Rule R315-261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Director no later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated previously, if the facility is treating storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of Section R315-270-72 for changes during interim status. Revised Part A applications necessary to comply with the provisions of Section R315-270-72 shall be filed with the Director.

(2) The owner or operator of a facility who fails to comply with the updating requirements of Subsection R315-270-10(g)(1) does not receive interim status as to the wastes not covered by duly filed part A applications.

(h) Reapplying for a permit. Owners and operators that have an effective permit and want to reapply for a new one, shall:

(1) Submit a new application at least 180 days before the expiration date of the effective permit, unless the Director allows a later date;

(2) The Director may not allow submittal of applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by Subsection R315-270-51(e)(2).

(i) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Subsection R315-270-10(d) and Sections R315-270-13 through 21 for a period of at least 3 years from the date the application is signed.

(j) Exposure information.

(1) Any part B permit application submitted by an owner or

operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information shall address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under Subsection R315-270-10(j)(1)(i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) Owners and operators of a landfill or a surface impoundment who have already submitted a part B application shall submit the exposure information required in Subsection R315-270-10(j)(1).

(k) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under Sections R315-270-32(b)(2) and 50(d).

(l) If the Director concludes, based on one or more of the factors listed in Subsection R315-270-10(l)(1) that compliance with the standards of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors, such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors, unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities, confirmation of which should be made through emissions testing;

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

R315-270-11. Hazardous Waste Permit Program -- Signatories to Permit Applications and Reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: By a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship; by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Director shall be signed by a person described in Subsection R315-270-11(a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in Subsection R315-270-11(a);

(2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under Subsection R315-270-11(b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subsection R315-270-11(b) shall be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d)(1) Any person signing a document under Subsection R315-270-11(a) or (b) shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under Sections R315-270-79 through 230, if the operator certifies according to Subsection R315-270-11(d)(1), then the owner may choose to make the following certification instead of the certification in Subsection R315-270-11(d)(1):

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

R315-270-12. Hazardous Waste Permit Program – Confidentiality of Information.

(a) Any information provided to The Director under Rule R315-270 shall be made available to the public to the extent and in the manner authorized by Sections 63G-2-101 through 901.

(b) Any person who submits information to the Director in accordance with Rule R315-270 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in Section 63G-2-309. Information covered by such a claim shall be disclosed by the Director only to the extent, and by means of the procedures, set forth Sections 63G-2-101 through 901. However, if no claim under Sections 63G-2-101 through 804 accompanies the information when it is received by the Director, it may be made available to the public without further notice to the person submitting it.

(c) Claims of confidentiality for the name and address of any permit applicant or permittee shall be denied.

R315-270-13. Hazardous Waste Permit Program – Contents of Part A of the Permit Application.

Part A of the permit application shall be submitted to the Director and include the following information:

(a) The activities conducted by the applicant which require it to obtain a permit under Section 19-6-108.

(b) Name, mailing address, and location, including latitude and longitude of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and phone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities,

(1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and

(2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under Rule R315-261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under Sections 19-6-101 through 125 or under RCRA.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPs) preconstruction approval under the Clean Air Act.

(7) Reserved

(8) Dredge or fill permits under section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

R315-270-14. Hazardous Waste Permit Program – Contents of Part B: General Requirements.

(a) Part B of the permit application consists of the general information requirements of Section R315-270-14, and the specific information requirements in Section R315-270-14 through 29

applicable to the facility. The part B information requirements presented in Sections R315-270-14 through 29 reflect the standards promulgated in Rule R315-264. These information requirements are necessary in order for the Director to determine compliance with the Rule R315-264 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in Section R315-270-11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in Section R315-270-28 is required in part B of the permit application.

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as Section R315-264-1 provides otherwise:

- (1) A general description of the facility.
- (2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Rule R315-264.
- (3) A copy of the waste analysis plan required by Subsection R315-264-13(b) and, if applicable Subsection R315-264-13(c).
- (4) A description of the security procedures and equipment required by Section R315-264-14, or a justification demonstrating the reasons for requesting a waiver of this requirement.
- (5) A copy of the general inspection schedule required by Subsection R315-264-15(b). Include where applicable, as part of the inspection schedule, specific requirements in Section R315-264-174, Subsection R315-264-193(i), Sections R315-264-195, 226, 254, 273, 303, 602, 1033, 1052, 1053, 1058, 1084, 1085, 1086, and 1088.
- (6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Sections R315-264-30 through 37.
- (7) A copy of the contingency plan required by Section R315-264-50 through 56. Include, where applicable, as part of the contingency plan, specific requirements in Sections R315-264-227, 255, and 200.
- (8) A description of procedures, structures, or equipment used at the facility to:
 - (i) Prevent hazards in unloading operations, for example, ramps, special forklifts;
 - (ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, trenches;
 - (iii) Prevent contamination of water supplies;
 - (iv) Mitigate effects of equipment failure and power outages;
 - (v) Prevent undue exposure of personnel to hazardous waste, for example, protective clothing; and
 - (vi) Prevent releases to atmosphere.
- (9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with Section R315-264-17 including documentation demonstrating compliance with Subsection R315-264-17(c).
- (10) Traffic pattern, estimated volume, number, types of vehicles, and control, for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals.
- (11) Facility location information;
 - (i) In order to determine the applicability of the seismic standard, Subsection R315-264-18(a), the owner or operator of a new facility shall identify the political jurisdiction, e.g., county, township, or election district, in which the facility is proposed to be located. If the county or election district is not listed in appendix VI

of Rule R315-264, no further information is required to demonstrate compliance with Subsection R315-264-18(a).

(ii) If the facility is proposed to be located in an area listed in appendix VI of Rule R315-264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault, which have displacement in Holocene time, within 3,000 feet of a facility are present, based on data from:

- (1) Published geologic studies,
- (2) Aerial reconnaissance of the area within a five-mile radius from the facility.
- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and
- (4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults, to include lineations, which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration, trenching, of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults, which have had displacement in Holocene time, passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found. The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors, e.g., wave action, which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood. Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area, usually areas of the floodplain less than 200 feet in width, these areas shall be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(iv) Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design

of operational units, e.g., tanks, incinerators, and flood protection devices, e.g., floodwalls, dikes, at the facility and how these will prevent washout.

(C) If applicable, and in lieu of Subsections R315-270-14(b)(11)(iv)(A) and (B), a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(I) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(II) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under Rules R315-270, 124, and 264 through 266.

(III) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(IV) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with Subsection R315-264-18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with Section R315-264-16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in Subsection R315-264-16(a)(3).

(13) A copy of the closure plan and, where applicable, the post-closure plan required by Sections R315-264-112, 118, and 197. Include, where applicable, as part of the plans, specific requirements in Sections R315-264-178, 197, 228, 258, 280, 310, 351, 601, and 603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under Section R315-264-119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with Section R315-264-142 and a copy of the documentation required to demonstrate financial assurance under Section R315-264-143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with Section R315-264-144 plus a copy of the documentation required to demonstrate financial assurance under Section R315-264-145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of Section R315-264-147. For a new facility, documentation showing the amount of insurance meeting the specification of Subsection R315-264-147(a) and, if applicable, Subsection R315-264-147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in Subsection R315-264-147(c).

(18) Where appropriate, proof of coverage by a State financial mechanism in compliance with Section R315-264-149 or Section R315-264-150.

(19) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters, 1 inch, equal to not more than 61.0 meters, 200 feet. Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each

operational unit of the facility. For example, contours with an interval of 1.5 meters, 5 feet, if relief is greater than 6.1 meters, 20 feet, or an interval of 0.6 meters, 2 feet, if relief is less than 6.1 meters, 20 feet. Owners and operators of hazardous waste management facilities located in mountainous areas should use large contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (i) Map scale and date.
- (ii) 100-year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses, residential, commercial, agricultural, recreational.
- (v) A wind rose, i.e., prevailing wind-speed and direction.
- (vi) Orientation of the map, north arrow.
- (vii) Legal boundaries of the hazardous waste management facility site.
- (viii) Access control, fences, gates.
- (ix) Injection and withdrawal wells both on-site and off-site.
- (x) Buildings; treatment, storage, or disposal operations; or other structure, recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.
- (xi) Barriers for drainage or flood control.
- (xii) Location of operational units within the hazardous waste management facility site, where hazardous waste is, or will be, treated, stored, or disposed, include equipment cleanup areas. For large hazardous waste management facilities the Director may allow the use of other scales on a case-by-case basis.

(20) Applicants may be required to submit such information as may be necessary to enable the Director to carry out his duties under State and Federal laws.

(21) For land disposal facilities, if a case-by-case extension has been approved under Section R315-268-5 or a petition has been approved under Section R315-268-6, a copy of the notice of approval for the extension or petition is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under Subsection R315-124-31(c).

(c) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in Subsection R315-264-90(b):

(1) A summary of the ground-water monitoring data obtained during the interim status period under 40 CFR 265.90 through 94, which are adopted by reference, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification, i.e., the information obtained from hydrogeologic investigations of the facility area.

(3) On the topographic map required under Subsection R315-270-14(b)(19), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under Section R315-264-95, the proposed location of ground-water monitoring wells as required under Section R315-264-97, and, to the extent possible, the information required in Subsection R315-270-14(c)(2).

(4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application was submitted that:

(i) Delineates the extent of the plume on the topographic map required under Subsection R315-270-14(b)(19);

(ii) Identifies the concentration of each appendix IX, of Rule R315-264, constituent throughout the plume or identifies the maximum concentrations of each appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the

proposed ground water monitoring program to be implemented to meet the requirements of Section R315-264-97.

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of Section R315-264-98. This submission shall address the following items specified under Section R315-264-98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of Section R315-264-99. Except as provided in Subsection R315-264-98(h)(5), the owner or operator shall also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of Section R315-264-100, unless the owner or operator obtains written authorization in advance from the Director to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with Section R315-264-99, the owner or operator shall address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with Sections R315-264-97 and 99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in Subsection R315-264-94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of Section R315-264-97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under Section R315-264-94 Table 1, or if ground water monitoring conducted at the time of permit application under 40 CFR 265.90 through 94, which are adopted by reference, at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of Section R315-264-100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Director that alternate concentration limits will protect human health and the environment after considering the criteria listed in Subsection R315-264-94(b). An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of Section R315-264-99 and Subsection R315-270-14(c)(6). To demonstrate compliance with Section R315-264-100, the owner or operator shall address, at a minimum, the following items:

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the ground water as set forth in Section R315-264-94;

(iii) Detailed plans and an engineering report describing the corrective action to be taken; and

(iv) A description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action.

(v) The permit may contain a schedule for submittal of the information required in Subsections R315-270-14(c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Director prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under Subsection R315-270-14(b)(19).

(ii) Designation of type of unit.

(iii) General dimensions and structural description, supply any available drawings.

(iv) When the unit was operated.

(v) Specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units shall submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator shall conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a Facility Assessment that will determine if a more complete investigation is necessary

R315-270-15. Hazardous Waste Permit Program – Specific Part B Information Requirements for Containers.

Except as otherwise provided in Section R315-264-170, owners or operators of facilities that store containers of hazardous waste shall provide the following additional information:

(a) A description of the containment system to demonstrate compliance with Section R315-264-175. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with Subsection R315-264-175(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with Section R315-264-176, location of buffer zone and containers holding ignitable or reactive wastes, and Subsection R315-264-177(c), location of incompatible wastes, where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with Subsections R315-264-177(a) and (b), and Subsections R315-264-17(b) and (c).

(e) Information on air emission control equipment as required

in Section R315-270-27.

R315-270-16. Hazardous Waste Permit Program – Specific Part B Information Requirements for Tank Systems.

Except as otherwise provided in Section R315-264-190, owners and operators of facilities that use tanks to store or treat hazardous waste shall provide the following additional information:

- (a) A written assessment that is reviewed and certified by a qualified Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under Sections R315-264-191 and 192;
- (b) Dimensions and capacity of each tank;
- (c) Description of feed systems, safety cutoff, bypass systems, and pressure controls, e.g., vents;
- (d) A diagram of piping, instrumentation, and process flow for each tank system;
- (e) A description of materials and equipment used to provide external corrosion protection, as required under Subsection R315-264-192(a)(3)(ii);
- (f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with Subsections R315-264-192(b), (c), (d), and (e);
- (g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of Subsections R315-264-193(a), (b), (c), (d), (e), and (f);
- (h) For tank systems for which a variance from the requirements of Section R315-264-193 is sought, as provided by Subsection R315-264-193(g):
 - (1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or
 - (2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.
- (i) Description of controls and practices to prevent spills and overflows, as required under Subsection R315-264-194(b); and
- (j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of Sections R315-264-198 and 199.
- (k) Information on air emission control equipment as required in Section R315-270-27.

R315-270-17. Hazardous Waste Permit Program – Specific Part B Information Requirements for Surface Impoundments.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments shall provide the following additional information:

- (a) A list of the hazardous wastes placed or to be placed in each surface impoundment;
- (b) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of Section R315-264-19 and Sections R315-264-221 through 223, addressing the following items:
 - (1) The liner system, except for an existing portion of a surface impoundment. If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-221(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
 - (2) The double liner and leak, leachate, detection, collection,

and removal system, if the surface impoundment shall meet the requirements of Subsection R315-264-221(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsections R315-264-221(d), (e), or (f), submit appropriate information;

- (3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
- (4) The construction quality assurance (CQA) plan if required under Section R315-264-19;
- (5) Proposed action leakage rate, with rationale, if required under Section R315-264-222, and response action plan, if required under Section R315-264-223;
- (6) Prevention of overtopping; and
- (7) Structural integrity of dikes;
- (c) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of Subsections R315-264-226(a), (b), and (d). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);
- (d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under Subsection R315-264-226(c). For new units, the owner or operator shall submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;
- (e) A description of the procedure to be used for removing a surface impoundment from service, as required under Subsections R315-264-227(b) and (c). This information should be included in the contingency plan submitted under Subsection R315-270-14(b)(7);
- (f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under Subsection R315-264-228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13);
- (g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how Section R315-264-229 will be complied with;
- (h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how Section R315-264-230 will be complied with.
- (i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-231. This submission shall address the following items as specified in Section R315-264-231:
 - (1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
 - (2) The attenuative properties of underlying and surrounding soils or other materials;
 - (3) The mobilizing properties of other materials co-disposed with these wastes; and
 - (4) The effectiveness of additional treatment, design, or monitoring techniques.
- (j) Information on air emission control equipment as required in Section R315-270-27.

R315-270-18. Hazardous Waste Permit Program – Specific Part B Information Requirements for Waste Piles.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that store or treat hazardous waste in waste piles shall provide the following additional information:

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to Section R315-264-251 and Sections R315-264-90 through 101 as provided by Subsection R315-264-250(c) or Subsection R315-264-90(b)(2), an explanation of how the standards of Subsection R315-264-250(c) will be complied with or detailed plans and an engineering report describing how the requirements of Subsection R315-264-90(b)(2) will be met.

(c) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of Sections R315-264-19 and R315-264-251 through 253, addressing the following items:

(1)(i) The liner system, except for an existing portion of a waste pile, if the waste pile shall meet the requirements of Subsection R315-264-251(a). If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-251(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate, detection; collection; and removal system, if the waste pile shall meet the requirements of Subsection R315-264-251(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsections R315-264-251(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under Section R315-264-19;

(v) Proposed action leakage rate, with rationale, if required under Section R315-264-252, and response action plan, if required under Section R315-264-253;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Subsections R315-264-254(a), (b), and (c). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of Section R315-264-256 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how Section R315-264-257 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under Subsection R315-264-258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-310(a) and (b) will be complied with. This information should be included in the closure

plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13).

(i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a waste pile that is not enclosed, as defined in Section R315-264-250(c), is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-259. This submission shall address the following items as specified in Section R315-264-259:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

R315-270-19. Hazardous Waste Permit Program – Specific Part B Information Requirements for Incinerators.

Except as Subsection R315-264-340 and Subsection R315-270-19(e) provide otherwise, owners and operators of facilities that incinerate hazardous waste shall fulfill the requirements of Subsection R315-270-19(a), (b), or (c).

(a) When seeking an exemption under Subsection R315-264-340 (b) or (c), Ignitable, corrosive, or reactive wastes only:

(1) Documentation that the waste is listed as a hazardous waste in Sections R315-261-30 through 35 solely because it is ignitable, Hazard Code I, or corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is 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 Subsection R315-261-23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Sections R315-261-20 through 24; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in Subsections R315-261-23(a)(1), (2), (3), (6), (7), or (8), and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section R315-270-62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Rule R315-261, appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Rule R315-261, appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on appropriate analytical techniques.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance

with the performance standards in Section R315-264-343.

(2) A detailed engineering description of the incinerator, including:

- (i) Manufacturer's name and model number of incinerator.
- (ii) Type of incinerator.
- (iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.
- (iv) Description of auxiliary fuel system, type/feed.
- (v) Capacity of prime mover.
- (vi) Description of automatic waste feed cutoff system(s).
- (vii) Stack gas monitoring and pollution control monitoring system.
- (viii) Nozzle and burner design.
- (ix) Construction materials.
- (x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in Subsection R315-270-19(c)(1). This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

- (i) Sampling and analysis techniques used to calculate performance standards in Section R315-264-343,
- (ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with Sections R315-264-343 and 345 including:

- (i) Expected carbon monoxide (CO) level in the stack exhaust gas.
- (ii) Waste feed rate.
- (iii) Combustion zone temperature.
- (iv) Indication of combustion gas velocity.
- (v) Expected stack gas volume, flow rate, and temperature.
- (vi) Computed residence time for waste in the combustion zone.
- (vii) Expected hydrochloric acid removal efficiency.
- (viii) Expected fugitive emissions and their control procedures.
- (ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Director finds necessary to achieve the purposes of Subsection R315-270-19(c).

(8) Waste analysis data, including that submitted in Subsection R315-270-19(c)(1), sufficient to allow the Director to specify as permit Principal Organic Hazardous Constituents, permit POHC's, those constituents for which destruction and removal efficiencies will be required.

(d) The Director shall approve a permit application without a trial burn if he finds that:

- (1) The wastes are sufficiently similar; and
- (2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under Section R315-264-345, operating conditions that will ensure that the performance standards in Section R315-264-343 shall be met by the incinerator.

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the

air emission standards and limitations in Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, the requirements of Section R315-270-19 do not apply, except those provisions the Director determines are necessary to ensure compliance with Subsections R315-264-345(a) and (c) if the owner or operator elect to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of Section R315-270-19, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k) and (l), R315-270-32(b)(2), and (b)(3).

R315-270-20. Hazardous Waste Permit Program – Specific Part B Information Requirements for Land Treatment Facilities.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that use land treatment to dispose of hazardous waste shall provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under Section R315-264-272. The description shall include the following information;

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

- (i) The type of test, e.g., column leaching, degradation;
- (ii) Materials and methods, including analytical procedures;
- (iii) Expected time for completion;
- (iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.

(b) A description of a land treatment program, as required under Section R315-264-271. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

- (1) The wastes to be land treated;
- (2) Design measures and operating practices necessary to maximize treatment in accordance with Subsection R315-264-273(a) including:

- (i) Waste application method and rate;
- (ii) Measures to control soil pH;
- (iii) Enhancement of microbial or chemical reactions;
- (iv) Control of moisture content;
- (3) Provisions for unsaturated zone monitoring, including:
 - (i) Sampling equipment, procedures, and frequency;
 - (ii) Procedures for selecting sampling locations;
 - (iii) Analytical procedures;
 - (iv) Chain of custody control;
 - (v) Procedures for establishing background values;
 - (vi) Statistical methods for interpreting results;
 - (vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in Subsection R315-264-278(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to Section R315-264-13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of Section R315-264-273. This submission shall address the following items:

- (1) Control of run-on;
- (2) Collection and control of run-off;
- (3) Minimization of run-off of hazardous constituents from the treatment zone;
- (4) Management of collection and holding facilities associated with run-on and run-off control systems;
- (5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5);
- (6) Control of wind dispersal of particulate matter, if applicable;
- (d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under Subsection R315-264-276(a) will be conducted including:
 - (1) Characteristics of the food-chain crop for which the demonstration will be made.
 - (2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;
 - (3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;
 - (4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown;
 - (e) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of Subsection R315-264-276(b) will be complied with;
 - (f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under Subsections R315-264-280(a)(8) and R315-264-280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under Subsection R315-270-14(b)(13);
 - (g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of Section R315-264-281 will be complied with;
 - (h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how Section R315-264-282 will be complied with.
 - (i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-283. This submission shall address the following items as specified in Section R315-264-283:
 - (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.

R315-270-21. Hazardous Waste Permit Program – Specific Part B Information Requirements for Landfills.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that dispose of hazardous waste in landfills shall provide the following additional information:

- (a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;
- (b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to meet the requirements of Sections R315-264-19 and Sections R315-264-301 through 303, addressing the following items:
 - (1)(i) The liner system, except for an existing portion of a landfill, if the landfill shall meet the requirements of Subsection

R315-264-301(a). If an exemption from the requirement for a liner is sought as provided by Subsection R315-264-301(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that shall, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate; detection; collection; and removal system; if the landfill shall meet the requirements of Subsection R315-264-301(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Subsection R315-264-301(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under Section R315-264-19;

(v) Proposed action leakage rate, with rationale, if required under Section R315-264-302, and response action plan, if required under Section R315-264-303;

- (2) Control of run-on;
- (3) Control of run-off;
- (4) Management of collection and holding facilities associated with run-on and run-off control systems; and
- (5) Control of wind dispersal of particulate matter, where applicable;

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Subsections R315-264-303(a), (b), and (c). This information shall be included in the inspection plan submitted under Subsection R315-270-14(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of Subsections R315-264-303(a) and (b). This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5).

(e) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with Subsection R315-264-310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with Subsection R315-264-310(b). This information should be included in the closure and post-closure plans submitted under Subsection R315-270-14(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the standards of Section R315-264-312 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how Section R315-264-313 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of Subsection R315-264-314(a) will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of Section R315-264-315 or Section R315-264-316, as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of Section R315-264-317. This submission shall address the following items as specified in Section R315-264-317:

- (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.

R315-270-22. Hazardous Waste Permit Program Specific Part B Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to Section 19-6-108 permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR 63, subpart EEE, i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of Subsection R307-214-2(39) which incorporates 40 CFR part 63, subpart EEE, the requirements of Section R315-270-22 do not apply. The requirements of Section R315-270-22 do apply, however, if the Director determines certain provisions are necessary to ensure compliance with Subsections R315-266-102(e)(1) and (e)(2)(iii) if the owner or operator elects to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the facility is an area source and the owner or operator elects to comply with the Sections R315-266-105 through 107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), R315-270-10(l), and Subsections R315-270-32(b)(2), and 32(b)(3).

(a) Trial burns

(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by Section R315-266-104, standards to control particulate matter provided by Section R315-266-105, standards to control metals emissions provided by Section R315-266-106, or standards to control hydrogen chloride or chlorine gas emissions provided by Section R315-266-107 shall conduct a trial burn to demonstrate conformance with those standards and shall submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section R315-270-66.

(i) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of Sections R315-266-104 through 107 and Subsections R315-270-22(a)(2) through (a)(5); and

(ii) The owner or operator may submit data in lieu of a trial burn, as prescribed in Subsection R315-270-22 (a)(6).

(2) Waiver of trial burn for DRE

(i) Boilers operated under special operating requirements. When seeking to be permitted under Subsections R315-266-104(a)(4) and R315-266-110 that automatically waive the DRE trial burn, the owner or operator of a boiler shall submit documentation that the boiler operates under the special operating requirements provided by Section R315-266-110.

(ii) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by Subsections R315-266-104(a)(5) and R315-266-109(a) that waive the DRE trial burn, the owner or operator shall submit:

(A) Documentation that the device is operated in conformance with the requirements of Subsection R315-266-109(a)(1).

(B) Results of analyses of each waste to be burned,

documenting the concentrations of nonmetal compounds listed in appendix VIII of Rule R315-261, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained. The analysis shall rely on appropriate analytical techniques.

(C) Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in Subsection R315-270-22(a)(2)(ii)(B) using procedures provided by Subsection R315-266-109(a)(2)(ii).

(D) Results of emissions dispersion modeling for emissions identified in Subsection R315-270-22(a)(2)(ii)(C) using modeling procedures prescribed by Subsection R315-266-106(h). The Director shall review the emission modeling conducted by the applicant to determine conformance with these procedures. The Director shall either approve the modeling or determine that alternate or supplementary modeling is appropriate.

(E) Documentation that the maximum annual average ground level concentration of each constituent identified in Subsection R315-270-22(a)(2)(ii)(B) quantified in conformance with Subsection R315-270-22(a)(2)(ii)(D) does not exceed the allowable ambient level established in appendices IV or V of Rule R315-266. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in appendix IV or Risk-Specific Dose has not been established in appendix V is 0.1 micrograms per cubic meter, as noted in the footnote to appendix IV.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I, or adjusted Tier I, metals feed rate screening limits provided by Subsections R315-266-106 (b) and (e) that control metals emissions without requiring a trial burn, the owner or operator shall submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the concentration of each metal controlled by Subsection R315-266-106(b) or (e) in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(iii) Documentation of how the applicant shall ensure that the Tier I feed rate screening limits provided by Subsection R315-266-106(b) or (e) shall not be exceeded during the averaging period provided by Subsection R315-266-106(b) or (e);

(iv) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Subsections R315-266-106(b)(3) through (b)(5);

(v) Documentation of compliance with the provisions of Subsection R315-266-106(b)(6), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by Subsection R315-266-106(b)(7) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of Subsection R315-266-109(b) which waives the particulate standard, and trial burn to demonstrate conformance with the particulate standard, applicants shall submit documentation supporting conformance with Subsections R315-270-22(a)(2)(ii) and (a)(3).

(5) Waiver of trial burn for HCl and Cl₂. When seeking to be permitted under the Tier I, or adjusted Tier I, feed rate screening limits for total chloride and chlorine provided by Subsections R315-266-107(b)(1) and (e) that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl₂) without requiring a trial burn, the owner or operator shall submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the levels of total chloride and chlorine

in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(iii) Documentation of how the applicant shall ensure that the Tier I, or adjusted Tier I, feed rate screening limits provided by Subsection R315-266-107(b)(1) or (e) shall not be exceeded during the averaging period provided by Subsection R315-266-107(b)(1) or (e);

(iv) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Subsection R315-266-107(b)(3);

(v) Documentation of compliance with the provisions of Subsection R315-266-107(b)(4), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by Subsection R315-266-107(b)(3) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with Sections R315-266-104 through 107 and Section R315-270-66 by providing the information required by Section R315-270-66 from previous compliance testing of the device in conformance with Subsection R315-266-103, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by Section R315-270-66 shall be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information shall be provided. The Director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify, under Section R315-266-102, operating conditions that shall ensure conformance with Subsection R315-266-102(c). In addition, the following information shall be submitted:

(i) For a waiver from any trial burn:

(A) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

(B) The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

(C) Such supplemental information as the Director finds necessary to achieve the purposes of Subsection R315-270-22(a).

(ii) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in Subsection R315-266-104(a). This analysis should specify the constituents in appendix VIII, Rule R315-261, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(b) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under Subsection R315-266-104(f) shall submit the following information at a minimum:

(1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(2) Documentation of the proposed baseline flue gas HC, and CO, concentration, including data on HC, and CO, levels during tests when the facility produced normal products under normal

operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(3) Test burn protocol to confirm the baseline HC, and CO, level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content, or other appropriate measure of organic content, of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(4) Trial burn plan to:

(i) Demonstrate that flue gas HC, and CO, concentrations when burning hazardous waste do not exceed the baseline HC, and CO, level; and

(ii) Identify the types and concentrations of organic compounds listed in appendix VIII, Rule R315-261, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Director;

(5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(6) Such other information as the Director finds necessary to achieve the purposes of Subsection R315-270-22(b).

(c) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under Subsection R315-266-106(f), the owner or operator shall submit documentation specifying how the approach ensures compliance with the metals emissions standards of Subsection R315-266-106(c) or (d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Director finds necessary to achieve the purposes of Subsection R315-270-22(b).

(d) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(e) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles, containers, as defined in Section R315-266-111, directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by Section R315-266-111.

(f) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of Section R315-266-112 shall submit information adequate to demonstrate conformance with those provisions.

R315-270-23. Hazardous Waste Permit Program -- Specific Part B Information Requirements for Miscellaneous Units.

Except as otherwise provided in Section R315-264-600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units shall provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of Sections R315-264-601 and 602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of Section R315-264-603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of Section R315-264-601. If the applicant can demonstrate that he does not violate the environmental performance standards of Section R315-264-601 and

the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(e) Any additional information determined by the Director to be necessary for evaluation of compliance of the unit with the environmental performance standards of Section R315-264-601.

R315-270-24. Hazardous Waste Permit Program – Specific Part B Information Requirements for Process Vents.

Except as otherwise provided in Section R315-264-1, owners and operators of facilities that have process vents to which Sections R315-264-1030 through 1036 applies shall provide the following additional information:

(a) For facilities that 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 or 40 CFR 265.1030 through 1035, which are adopted by reference, an implementation schedule as specified in Subsection R315-264-1033(a)(2).

(b) Documentation of compliance with the process vent standards in Section R315-264-1032, including:

(1) 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.

(2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or concentrations, that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(3) Information and data used to determine whether or not a process vent is subject to the requirements of Section R315-264-1032.

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of Section R315-264-1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-264-1035(b)(3).

(d) Documentation of compliance with Section R315-264-1033, including:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by Subsection R315-264-1033(k).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Subsection R315-264-1035(b)(4)(iii).

(4) 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.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless 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.

R315-270-25. Hazardous Waste Permit Program – Specific Part B Information Requirements for Equipment.

Except as otherwise provided in Subsection R315-264-1, owners and operators of facilities that have equipment to which Sections R315-264-1050 through 1065 applies shall provide the following additional information:

(a) For each piece of equipment to which Sections R315-264-1050 through 1065 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility, e.g., identify the hazardous waste management unit on a facility plot plan.

(3) Type of equipment, e.g., a pump or pipeline valve.

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment, e.g., gas/vapor or liquid.

(6) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals".

(b) For facilities that 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 or 40 CFR 265.1050 through 1064, which are adopted by reference, an implementation schedule as specified in Subsection R315-264-1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-264-1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in Sections R315-264-1052 through 1059. This documentation shall contain the records required under Section R315-264-1064. The Director may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with Section R315-264-1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by Subsection R315-264-1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Subsection R315-264-1035(b)(4)(iii).

(4) 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 operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

R315-270-26. Hazardous Waste Permit Program – Special Part B Information Requirements for Drip Pads.

Except as otherwise provided by Subsection R315-264-1, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads shall provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to Sections R315-264-90 through 101, as provided by Subsection R315-264-90, detailed plans and an engineering report describing how the requirements of Subsection R315-264-90(b)(2) shall be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of Section R315-264-573, including the as-built drawings and specifications. This submission shall address the following items as specified in Section R315-264-571:

- (1) The design characteristics of the drip pad;
- (2) The liner system;
- (3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
- (4) Practices designed to maintain drip pads;
- (5) The associated collection system;
- (6) Control of run-on to the drip pad;
- (7) Control of run-off from the drip pad;
- (8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
- (9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.
- (10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
- (11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;
- (12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
- (13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.
- (14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section R315-264-573. This information should be included in the inspection plan submitted under Subsection R315-270-14(b)(5).
- (15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of Subsection R315-264-573(a) through (f).
- (16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under Subsection R315-264-575(a). For any waste not to be removed from the drip pad upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Subsections R315-264-310 (a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Subsection R315-270-14(b)(13).

R315-270-27. Hazardous Waste Permit Program – Specific Part B Information Requirements for Air Emission Controls for Tanks, Surface Impoundments, and Containers.

(a) Except as otherwise provided in Section R315-264-1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of Sections R315-264-1080 through 1090, shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to Subsection R315-264-1084(d)(1) or (d)(2) 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 applicable design specifications as listed in Subsection R315-264-1084(e)(1) or (f)(1).

(2) Identification of each container area subject to the requirements of Sections R315-264-1080 through 1090 and certification by the owner or operator that the requirements of Sections R315-270-10 through 29 are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of Subsection R315-264-1084(d)(5) or 1086(e)(1)(ii) that includes 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.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Subsection R315-264-1085(c) 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)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section R315-264-1087 that includes design and performance information as specified in Subsections R315-270-24(c) and (d).

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR 265.1080 through 1090, which are adopted by reference, cannot comply with Sections R315-264-1080 through 1090 by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082, which is adopted by reference.

R315-270-28. Hazardous Waste Permit Program – Part B Information Requirements for Post-Closure Permits.

For post-closure permits, the owner or operator is required to submit only the information specified in Subsections R315-270-14(b)(1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), (c), and (d), unless the Director determines that additional information from Sections R315-270-14, 16, 17, 18, 20, or 21 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in Subsection R315-270-1(c)(7).

R315-270-29. Hazardous Waste Permit Program – Permit Denial.

The Director may, pursuant to the procedures in Rule R315-124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

R315-270-30. Hazardous Waste Permit Program – Conditions

Applicable to All Permits.

The following conditions apply to all hazardous waste facility permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

(a) Duty to comply. The permittee shall comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See Section R315-270-61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of Sections 19-6-101 through 125 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment; practices; or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by Sections 19-6-101 through 125, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring

information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by Subsection R315-264-73(b)(9), and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) Signatory requirements. All applications, reports, or information submitted to the Director shall be signed and certified. See Section R315-270-11.

(l) Reporting requirements

(1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in Section R315-270-42, until:

(i) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in Subsection R315-270-30(1)(2)(i), the permittee has not received notice from the Director of the Director's intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Sections 19-6-101 through 125. See Section R315-270-40.

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

- (A) Name, address, and telephone number of the owner or operator;
- (B) Name, address, and telephone number of the facility;
- (C) Date, time, and type of incident;
- (D) Name and quantity of material(s) involved;
- (E) The extent of injuries, if any;
- (F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
- (G) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five day written notice requirement in favor of a written report within 15 days.

(7) Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee shall submit a letter report, including a copy of the manifest, to the Director. See Section R315-264-72.

(8) Unmanifested waste report: This report shall be submitted to the Director within 15 days of receipt of unmanifested waste. See Section R315-264-76

(9) Biennial report: A biennial report shall be submitted covering facility activities during odd numbered calendar years. See Section R315-264-75.

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under Subsections R315-270-30(l)(4), (5), and (6), at the time monitoring reports are submitted. The reports shall contain the information listed in Subsections R315-270-30(l)(6).

(11) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) Information repository. The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in Subsection R315-124-33(b). The information repository shall be governed by the provisions in Subsections R315-124-124-33(c) through (f).

R315-270-31. Hazardous Waste Permit Program – Requirements for Recording and Reporting of Monitoring Results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Rules R315-264 and 266. Reporting shall be no less frequent than specified in the above regulations.

R315-270-32. Hazardous Waste Permit Program – Establishing Permit Conditions.

(a) In addition to conditions required in all permits (Section R315-270-30) the Director shall establish conditions, as required on

a case-by-case basis, in permits under Section R315-270-50 (duration of permits), Subsection R315-270-33(a) (schedules of compliance), and Section R315-270-31 (monitoring).

(b)(1) Each permit shall include permit conditions necessary to achieve compliance with Sections 19-6-101 through 125 and rules adopted thereunder, including each of the applicable requirements specified in Rules R315-264, 266, and 268. In satisfying this provision, the Director may incorporate applicable requirements of Rules R315-264, 266, and 268 directly into the permit or establish other permit conditions that are based on these rules.

(2) Each permit issued under Section 19-6-108 shall contain terms and conditions as the Director determines necessary to protect human health and the environment.

(3) If, as the result of an assessment(s) or other information, the Director determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, Rule R315-264 or 266 to ensure protection of human health and the environment, he shall include those terms and conditions in a permit for a hazardous waste combustion unit.

(c) An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Section R315-270-41.

(d) New or reissued permits, and to the extent allowed under Section R315-270-41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Section R315-270-32 and in Section R315-270-31.

(e) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

R315-270-33. Hazardous Waste Permit Program – Schedules of Compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with Sections 19-6-101 through 125 and rules adopted thereunder.

(1) Time for compliance. Any schedules of compliance under Section R315-270-33 shall require compliance as soon as possible.

(2) Interim dates. Except as provided in Subsection R315-270-33(b)(1)(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing, of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities; by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements; rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional

schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term shall include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subsection R315-270-33(b)(3)(i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as resolution of the board of directors of a corporation.

R315-270-40. Hazardous Waste Permit Program -- Transfer of Permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Subsection R315-270-40(b) or 41(b)(2), to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with Section R315-270-42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Sections R315-264-140 through 151 until the new owner or operator has demonstrated that he or she is complying with the requirements of Sections R315-264-140 through 151. The new owner or operator shall demonstrate compliance with Sections R315-264-140 through 151 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Sections R315-264-140 through 151, the Director shall notify the old owner or operator that he or she no longer needs to comply with Sections R315-264-140 through 151 as of the date of demonstration.

R315-270-41. Hazardous Waste Permit Program -- Modification or Revocation and Reissuance of Permits.

When the Director receives any information; for example, inspects the facility, receives information submitted by the permittee as required in the permit, see Section R315-270-30, receives a request for revocation and reissuance under Section R315-124-5 or conducts a review of the permit file; the Director may determine whether one or more of the causes listed in Subsections R315-270-

41(a) and (b) for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection R315-270-41(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Subsection R315-124-5(c)(2). If cause does not exist under Section R315-270-41, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of Subsection R315-270-42. Otherwise, a draft permit shall be prepared and other procedures in Rule R315-124 followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(4) Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in Section R315-270-41, when a permit for a land disposal facility is reviewed by the Director under Subsection R315-270-50(d), the Director shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Rules R315-124, 260 through 266, and 270.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under Section R315-270-43, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification; as required in the permit, see Subsection R315-270-30(l)(3); of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

R315-270-42. Hazardous Waste Permit Program -- Permit Modification at the Request of the Permittee.

(a) Class 1 modifications.

(1) Except as provided in Subsection R315-270-42(a)(2), the permittee may put into effect Class 1 modifications listed in appendix I of Section R315-270-42 under the following conditions:

(i) The permittee shall notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and

shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by Sections R315-270-13 through 21, 62, and 63.

(ii) The permittee shall send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with Subsection R315-124-10(c)(1)(ix), and the appropriate units of State and local government, as specified in Subsection R315-124-10(c)(1)(x). This notification shall be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Director approval, the notification shall be made within 90 calendar days after the Director approves the request.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director shall inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee shall comply with the original permit conditions.

(2) Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in Subsection R315-270-42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee shall inform the Director of this decision in the notice required in Subsection R315-270-42(b)(1).

(b) Class 2 modifications.

(1) For Class 2 modifications, listed in appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

- (i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
- (ii) Identifies that the modification is a Class 2 modification;
- (iii) Explains why the modification is needed; and
- (iv) Provides the applicable information required by Sections R315-270-13 through 21, 62, and 63.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsections R315-124-10(c)(1)(ix) and (x) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

- (i) Announcement of a 60-day comment period, in accordance with Subsection R315-270-42(b)(5), and the name and address of an Agency contact to whom comments shall be sent;
- (ii) Announcement of the date, time, and place for a public meeting held in accordance with Subsection R315-270-42(b)(4);
- (iii) Name and telephone number of the permittee's contact person;
- (iv) Name and telephone number of an Agency contact person;
- (v) Location where copies of the modification request and any supporting documents can be viewed and copied; and
- (vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(b)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period shall begin on the date

the permittee publishes the notice in the local newspaper. Comments should be submitted to the Division contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director shall:

- (A) Approve the modification request, with or without changes, and modify the permit accordingly;
- (B) Deny the request;
- (C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that the Director will decide on the request within the next 30 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, the Director shall, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in Subsection R315-270-42(b)(6)(ii) by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal action by the Director. The authorized activities shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of Rule R315-265. If the Director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in Section R315-270-42(b)(6)(i), (ii), or (iii), such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under Subsection R315-270-42(b)(6)(iii), or a temporary authorization under Subsection R315-270-42(b)(6)(i)(D) or (ii)(D), if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee shall within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(2) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee shall receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in Subsection R315-270-42(b)(6)(iv)(A), the effective date of the permanent authorization shall be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in Subsection R315-270-42(b)(6)(vii), if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is

authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under Section R315-270-41 or 42. The activities authorized under Subsection R315-270-42(b) shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of Rule R315-265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director shall consider all written comments submitted during the public comment period and shall respond in writing to all significant comments in the Director's decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under Subsection R315-270-42(b)(6)(i) through (iii) for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of Rule R315-264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) Class 3 modifications.

(1) For Class 3 modifications listed in appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Sections R315-270-13 through 22, 62, 63, and 66.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsection R315-124-10(c)(1)(ix) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a 60-day comment period, and a name and address of the Director to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with Subsection R315-270-42(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a Division contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Division's contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(c)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent

practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Director.

(6) After the conclusion of the 60-day comment period, the Director shall grant or deny the permit modification request according to the permit modification procedures of Rule R315-124. In addition, the Director shall consider and respond to all significant written comments received during the 60-day comment period.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in appendix I of Section R315-270-42, the permittee may submit a Class 3 modification request to the Director, or the permittee may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, the permittee shall provide the Director with the necessary information to support the requested classification.

(2) The Director shall make the determination described in Subsection R315-270-42(d)(1) as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the wastes managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with Subsection R315-270-42(e). Temporary authorizations shall have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in Subsection R315-270-42(e)(3)(ii), and

(B) Any Class 3 modification that meets the criteria in Subsection R315-270-42(e)(3)(ii)(A) or (B); or that meets the criteria in Subsections R315-270-42(e)(3)(ii)(C) through (E) and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request shall include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Rule R315-264 standards.

(iii) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Director and to appropriate units of State and local governments as specified in Subsection R315-124-10(c)(ix). This notification shall be made within seven days of submission of the authorization request.

(3) The Director shall approve or deny the temporary

authorization as quickly as practical. To issue a temporary authorization, the Director shall find:

(i) The authorized activities are in compliance with the standards of Rule R315-264.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with Rule R315-268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with Subsection R315-270-42(b)(6)(i)(D) or (ii)(D), or

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of Subsection R315-270-42(c) are conducted.

(f) Public notice and appeals of permit modification decisions.

(1) The Director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under Section R315-270-42 to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under Subsection R315-270-42(b)(6)(iii) or (v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under Section R315-270-42 may be appealed under the permit appeal procedures of Section R315-124-19.

(3) An automatic authorization that goes into effect under Subsection R315-270-42(b)(6)(iii) or (v) may be appealed under the permit appeal procedures of Section R315-124-19; however, the permittee may continue to conduct the activities pursuant to the automatic authorization unless and until a final determination is made.

(g) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Rule R315-261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Rules R315-265 and 266;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to hazardous waste management standards;

(v) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Rule R315-265 for groundwater monitoring and financial

responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the permittee shall lose authority to operate under Section R315-270-42.

(2) New wastes or units added to a facility's permit under Subsection R315-270-42(g) do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) Reserved.

(i) Permit modification list. The Director shall maintain a list of all approved permit modifications and shall publish a notice once a year in a State-wide newspaper that an updated list is available for review.

(j) Combustion facility changes to meet 40 CFR 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under appendix I of Section R315-270-42, section L(9).

(1) Facility owners or operators shall have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR part 63 Section 63.1200-63.1499 revised as of July 1, 2000) in order to request a permit modification under Section R315-270-42 for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

(2) Facility owners or operators shall comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under Section R315-270-42 for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(3) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at the Director's discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

(k) Waiver of permit conditions in support of transition to the 40 CFR 63 MACT standards.

(1) the permittee may request to have specific operating and emissions limits waived by submitting a Class 1 permit modification request under appendix I of Section R315-270-42, section L(10). The permittee shall:

(i) Identify the specific RCRA permit operating and emissions limits which the permittee is requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, at the Director's discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation, renewable at the discretion of the Director, the permittee shall:

(i) Submit a modification request to the Director at the same time test plans are submitted to the Director; and

(ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

Table

Appendix I to Section R315-270-42 -- Classification of Permit Modification

Modifications	Class		
A. General Permit Provisions		procedures or monitoring schedule, with prior approval of the Director	
1. Administrative and informational changes	1	3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Director	¹
2. Correction of typographical errors	1	4. Changes in point of compliance	2
3. Equipment replacement or upgrading with functionally equivalent components, e.g., pipes, valves, pumps, conveyors, controls	1	5. Changes in indicator parameters, hazardous constituents, or concentration limits, including ACLs:	
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:		a. As specified in the groundwater protection standard	3
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1	b. As specified in the detection monitoring program	2
b. Other changes,	2	6. Changes to a detection monitoring program as required by Subsection R315-264-98(h), unless otherwise specified in this appendix	2
5. Schedule of compliance:		7. Compliance monitoring program:	
a. Changes in interim compliance dates, with prior ¹ approval of the Director	1	a. Addition of compliance monitoring program as required by Sections R315-264-98(g)(4) and R315-264-99	3
b. Extension of final compliance date	3	b. Changes to a compliance monitoring program as required by Subsection R315-264-99(j), unless otherwise specified in this appendix	2
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director	¹	8. Corrective action program:	
7. Changes in ownership or operational control of a facility, provided the procedures of Subsection R315-270-40(b) are followed	¹	a. Addition of a corrective action program as required by Subsection R315-264-99(h)(2) and Section R315-264-100	3
8. Changes to remove permit conditions that are no longer applicable, i.e., because the standards upon which they are based are no longer applicable to the facility.	¹	b. Changes to a corrective action program as required by Subsection R315-264-100(h), unless otherwise specified in this appendix	2
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of Section R315-261-4.	¹	D. Closure	
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of Section R315-261-4.	¹	1. Changes to the closure plan:	
B. General Facility Standards		a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Director	¹
1. Changes to waste sampling or analysis methods		b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director	¹
a. To conform with agency guidance or regulations	1	c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Director	¹
b. To incorporate changes associated with F039, multi-source leachate, sampling or analysis methods	1	d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Director	¹
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	¹	e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
d. Other changes	2	f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under Subsections R315-264-113(d) and (e)	2
2. Changes to analytical quality assurance/control plan:		2. Creation of a new landfill unit as part of	3
a. To conform with agency guidance or regulations	1	3. Addition of the following new units to be used temporarily for closure activities:	
b. Other changes	2	a. Surface impoundments	3
3. Changes in procedures for maintaining the operating record	1	b. Incinerators	3
4. Changes in frequency or content of inspection schedules	2	c. Waste piles that do not comply with Subsection R315-264-250(c)	3
5. Changes in the training plan:		d. Waste piles that comply with Subsection R315-264-250(c)	2
a. That affect the type or decrease the amount of training given to employees	2	e. Tanks or containers, other than specified below	2
b. Other changes	1	f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Director	¹
6. Contingency plan:		g. Staging piles	2
a. Changes in emergency procedures, i.e., spill or release response procedures	2	E. Post-Closure	
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1	1. Changes in name, address, or phone number of contact in post-closure plan	1
c. Removal of equipment from emergency equipment list	2	2. Extension of post-closure care period	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1	3. Reduction in the post-closure care period	3
7. Construction quality assurance plan:		4. Changes to the expected year of final closure, where other permit conditions are not changed	1
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications	1	5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
b. Other changes	2	F. Containers	
Note: When a permit modification, such as introduction of a new unit, requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.		1. Modification or addition of container units:	
C. Ground-Water Protection		a. Resulting in greater than 25% increase in	3
1. Changes to wells:			
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system	2		
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1		
2. Changes in ground-water sampling or analysis	¹		

	the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below		technology that yields the greatest environmental benefit," with prior approval of the Director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	
b.	Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	2		
c.	Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in Subsection R315-268-8(a)(2)(ii), with prior approval of the Director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1	2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit	2
2.	a. Modification of a container unit without increasing the capacity of the unit	2	3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided -The capacity difference is no more than 1500 gallons, -The facility's permitted tank capacity is not increased, and -The replacement tank meets the same conditions in the permit.	1
	b. Addition of a roof to a container unit without alteration of the containment system	1	4. Modification of a tank management practice	2
3.	Storage of different wastes in containers, except as provided in (F)(4) below:		5. Management of different wastes in tanks:	
	a. That require additional or different management practices from those authorized in the permit	3	a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below	3
	b. That do not require additional or different management practices from those authorized in the permit	2	b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d)	2
Note:	See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.		c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." The modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1
4.	Storage or treatment of different wastes in containers:		d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, e.g., incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1
	a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1	Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
	b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, e.g., incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1	H. Surface Impoundments	
G.	Tanks		1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity	3
1.			2. Replacement of a surface impoundment unit	3
a.	Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below	3	3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system	2
b.	Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below	2	4. Modification of a surface impoundment management practice	2
c.	Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	2	5. Treatment, storage, or disposal of different wastes in surface impoundments:	
d.	After prior approval of the Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	1	a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	3
e.	Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy, in whole or in part, the standard of "use of practically available	1	b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	2
	technology that yields the greatest environmental benefit," and provided that the unit meets the minimum technological requirements stated in		c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the unit meets the minimum technological requirements stated in	1

Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028		in Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type, for example, incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1	d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the landfill has previously received wastes of the same type, for example, incinerator ash. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028	1
6. Modifications of unconstructed units to comply with Subsection R315-264-221(c) and 226(d), and Sections R315-264-222, and 223	1	7. Modifications of unconstructed units to comply with Subsection R315-264-251(c), Sections R315-264-252 and 253, Subsections R315-264-254(c) and R315-264-301(c), Section R315-264-302, Subsection R315-264-303(c), and Section R315-264-304	1
7. Changes in response action plan:		8. Changes in response action plan:	
a. Increase in action leakage rate	3	a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3	b. Change in a specific response reducing its frequency or effectiveness	3
c. Other changes	2	c. Other changes	2
Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes,		Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.,	
I. Enclosed Waste Piles. For all waste piles except those complying with Subsection R315-264-250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with Subsection R315-264-250(c).		K. Land Treatment	
1. Modification or addition of waste pile units:		1. Lateral expansion of or other modification of a land treatment unit to increase areal extent	3
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity	3	2. Modification of run-on control system	2
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity	2	3. Modify run-off control system	3
2. Modification of waste pile unit without increasing the capacity of the unit	2	4. Other modifications of land treatment unit component specifications or standards required in permit	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit	1	5. Management of different wastes in land treatment units:	
4. Modification of a waste pile management practice	2	a. That require a change in permit operating conditions or unit design specifications	3
5. Storage or treatment of different wastes in waste piles:		b. That do not require a change in permit operating conditions or unit design specifications	2
a. That require additional or different management practices or different design of the unit	3	Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes	
b. That do not require additional or different management practices or different design of the unit	2	6. Modification of a land treatment unit management practice to:	
6. Conversion of an enclosed waste pile to a containment building unit	2	a. Increase rate or change method of waste application	3
Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.		b. Decrease rate of waste application	1
J. Landfills and Unenclosed Waste Piles		7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3	8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
2. Replacement of a landfill	3	9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to Subsection R315-264-278(g)(2)	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system	3	10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	2	11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements	2
5. Modification of a landfill management practice	2	12. Changes in background values for hazardous constituents in soil and soil-pore liquid	2
6. Landfill different wastes:		13. Changes in sampling, analysis, or statistical procedure	2
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3	14. Changes in land treatment demonstration program prior to or during the demonstration	2
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	2	15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and	1
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the landfill unit meets the minimum technological requirements stated	1		

16.	the Director's prior approval has been received Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Director	1	
17.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3	
18.	Changes in vegetative cover requirements for closure	2	
L.	Incinerators, Boilers, and Industrial Furnaces:		
1.	Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	
2.	Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2	
3.	Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl ₂ , metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	
4.	Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards	2	
5.	Operating requirements:		
a.	Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	
b.	Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	3	
c.	Modification of any other operating	2	
	condition or any inspection or recordkeeping requirement specified in the permit		
6.	Burning different wastes:		
a.	If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	
b.	If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit	2	
	Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes		
7.	Shakedown and trial burn:		
a.	Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	2	
b.	Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Director	1	
c.	Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director	1	
d.	Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	1	
8.	Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit	1	
9.	Technology changes needed to meet standards under 40 CFR part 63 (Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Subsection R315-270-42(j) are followed.	1	
10.	Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Subsection R315-270-42(k) are followed.	1	
M.	Containment Buildings.		
1.	Modification or addition of containment building units:		
a.	Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3	
b.	Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2	
2.	Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2	
3.	Replacement of a containment building with a containment building that meets the same design standards provided:		
a.	The unit capacity is not increased	1	
b.	The replacement containment building meets the same conditions in the permit	1	
4.	Modification of a containment building management practice	2	
5.	Storage or treatment of different wastes in containment buildings:		
a.	That require additional or different management practices	3	
b.	That do not require additional or different management practices	2	
N.	Corrective Action:		
1.	Approval of a corrective action management unit pursuant to Section R315-264-552	3	
2.	Approval of a temporary unit or time	2	

extension for a temporary unit pursuant to Section R315-264-553	
3. Approval of a staging pile or staging pile operating term extension pursuant to Section R315-264-554	2
0. Burden Reduction	
1. Reserved	
2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to Subsection R315-264-52(b)	1
3. Changes to recordkeeping and reporting requirements pursuant to: Subsections R315-264-56(i), R315-264-343(a)(2), R315-264-1061(b)(1), (d), R315-264-1062(a)(2), R315-264-196(f), R315-264-100(g), and R315-264-113(e)(5)	1
4. Changes to inspection frequency for tank systems pursuant to Subsection R315-264-195(b)	1
5. Changes to detection and compliance monitoring program pursuant to Subsections R315-264-98(d), (g)(2), and (g)(3), R315-264-99(f), and (g)	1

¹Class 1 modifications requiring prior Agency approval.

R315-270-43. Hazardous Waste Permit Program-- Termination of Permits.

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Director shall follow the applicable procedures in Rule R315-124 in terminating any permit under Section R315-270-43.

R315-270-50. Hazardous Waste Permit Program-- Duration of Permits.

(a) Hazardous Waste operation permits shall be effective for a fixed term not to exceed 10 years.

(b) Except as provided in Section R315-270-51, the term of a permit shall not be extended by modification beyond the maximum duration specified in Section R315-270-50.

(c) The Director may issue any permit for a duration that is less than the full allowable term under Section R315-270-50.

(d) Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section R315-270-41.

R315-270-51. Hazardous Waste Permit Program -- Continuation of Expiring Permits.

(a) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under Section R315-270-14 and the applicable sections in Sections R315-270-15 through 29 which is a complete application for a new permit; and

(2) The Director through no fault of the permittee, does not issue a new permit with an effective date under Section R315-124-15 on or before the expiration date of the previous permit, for example, when issuance is impracticable due to time or resource constraints.

(b) Effect. Permits continued under Section R315-270-51 remain fully effective and enforceable.

(c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under Section R315-124-6. If the permit is denied, the owner or operator

would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Rule R315-124 with appropriate conditions; or

(4) Take other actions authorized by these rules.

(d) State continuation. If a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

R315-270-60. Hazardous Waste Permit Program -- Permits by Rule.

Notwithstanding any other provision of Section R315-270-60 or Rule R315-124, the following shall be deemed to have a approved hazardous waste permit if the conditions listed are met:

(a) Reserved

(b) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under Rule R317-7 and 40 CFR 144 or 145; and

(2) Complies with the conditions of that permit and the requirements of 40 CFR 144.14 and Section R317-7-11.

(3) For UIC permits issued after November 8, 1984:

(i) Complies with Section R315-264-101; and

(ii) Where the UIC well is the only unit at a facility which requires a hazardous waste permit, complies with Subsection R315-270-14(d).

(c) Publicly owned treatment works. The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

(1) Has an NPDES permit;

(2) Complies with the conditions of that permit; and

(3) Complies with the following regulations:

(i) Section R315-264-11, Identification number;

(ii) Section R315-264-71, Use of manifest system;

(iii) Section R315-264-72, Manifest discrepancies;

(iv) Section R315-264-73(a) and (b)(1), Operating record;

(v) Section R315-264-75, Biennial report;

(vi) Section R315-264-76, Unmanifested waste report; and

(vii) For NPDES permits issued after November 8, 1984, Section R315-264-101.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

R315-270-61. Hazardous Waste Permit Program -- Emergency Permits.

(a) Notwithstanding any other provision of Rule R315-270 or Rule R315-124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit:

(1) To a non-permitted facility to allow treatment, storage, or disposal of hazardous waste; or

(2) To a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if the Director determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under

Subsection R315-124-10(c)(3) including:

- (i) Name and address of the office granting the emergency authorization;
- (ii) Name and location of the permitted hazardous waste management facility;
- (iii) A brief description of the wastes involved;
- (iv) A brief description of the action authorized and reasons for authorizing it; and
- (v) Duration of the emergency permit; and
- (6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of Rule R315-270 and Rules R315-264 and 266.

R315-270-62. Hazardous Waste Permit Program – Hazardous Waste Incinerator Permits.

When an owner or operator of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in Subsection R307-214-2(39), i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d), which are incorporated by reference in Subsection R307-214-2(39), documenting compliance with all applicable requirements of Subsection R307-214-2(39), the requirements of Section R315-270-62 do not apply, except those provisions the Director determines are necessary to ensure compliance with Subsections R315-264-345(a) and (c) if the owner or operator elects to comply with Section R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of Section R315-270-62, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), 10(l), 32(b)(2), and 32(b)(3).

(a) For the purposes of determining operational readiness following completion of physical construction, the Director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section R315-270-42.

(1) Applicants shall submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of Section R315-264-343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section R315-264-345.

(2) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section R315-264-343.

(b) For the purposes of determining feasibility of compliance with the performance standards of Section R315-264-343 and of determining adequate operating conditions under Section R315-264-345, the Director shall establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under Subsection R315-270-62(b)(2) with a part B of the permit application.

(2) The trial burn plan shall include the following information:

- (i) An analysis of each waste or mixture of wastes to be burned which includes:
 - (A) Heat value of the waste in the form and composition in

which it will be burned.

(B) Viscosity (if applicable), or description of the physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Rule R315-261, appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Rule R315-261, appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for the exclusion stated. The waste analysis shall rely on appropriate analytical techniques.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system, type/feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under Subsection R315-270-62(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of Subsection R315-270-62(b)(2) and the criteria in Subsection R315-270-62(b)(5).

(3) The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of Subsection R315-270-62(b)(2).

(4) Based on the waste analysis data in the trial burn plan, the Director shall specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs shall be specified by the Director based on The Director's estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Sections R315-261-30 through 35, the hazardous waste organic constituent or constituents identified in appendix VII of Rule R315-261 as the basis for listing.

(5) The Director shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by Section R315-264-343 can be

met;

(ii) The trial burn itself shall not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under Section R315-264-345; and

(iv) The information sought in Subsection R315-270-62(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Director shall send a notice to all persons on the facility mailing list as set forth in Subsection R315-124-10(c)(1)(ix) and to the appropriate units of State and local government as set forth in Subsection R315-124-10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O₂) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any; ash residues; and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Subsection R315-264-343(a).

(v) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour, 4 pounds per hour, a computation of HCl removal efficiency in accordance with Subsection R315-264-343(b).

(vi) A computation of particulate emissions, in accordance with Subsection R315-264-343(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in Section R315-264-343 and to establish the operating conditions required by Section R315-264-345 as necessary to meet that performance standard.

(8) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in Subsection R315-270-62(b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(9) All data collected during any trial burn shall be submitted to the Director following the completion of the trial burn.

(10) All submissions required by Subsection R315-270-62(b) shall be certified on behalf of the applicant by the signature of a

person authorized to sign a permit application or a report under Section R315-270-11.

(11) Based on the results of the trial burn, the Director shall set the operating requirements in the final permit according to Section R315-264-345. The permit modification shall proceed according to Section R315-270-42.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Director may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of Section R315-264-345, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Director.

(1) Applicants shall submit a statement, with part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of Section R315-264-343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in Section R315-264-345.

(2) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section R315-264-34 based on his engineering judgment.

(d) For the purpose of determining feasibility of compliance with the performance standards of Section R315-264-343 and of determining adequate operating conditions under Section R315-264-345, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with Subsection R315-270-19(b) and Subsections R315-270-62(b)(2) through (b)(5) and (b)(7) through (b)(10) or, instead, submit other information as specified in Subsection R315-270-19(c). The Director shall announce the Director's intention to approve the trial burn plan in accordance with the timing and distribution requirements of Subsection R315-270-62(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under Subsection R315-270-19(a) are exempt from compliance with Sections R315-264-343 and 345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in Subsection R315-270-62(b)(7), with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director shall specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

R315-270-63. Hazardous Waste Permit Program – Permits for Land Treatment Demonstrations Using Field Test or Laboratory Analyses.

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section R315-264-272, the Director may issue a treatment demonstration permit. The

permit shall contain only those requirements necessary to meet the standards in Subsection R315-264-272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Director may issue a two-phase facility permit if the Director finds that, based on information submitted in part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Director finds that not enough information exists upon which the Director can establish permit conditions to attempt to provide for compliance with all of the requirements of Sections R315-264-270 through 283, he shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Director finds that a phased permit may be issued, the Director shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone; monitoring procedures; post-demonstration clean-up activities; and any other conditions which the Director finds may be necessary under Subsection R315-264-272(c). The Director shall include conditions in the second phase of the facility permit to attempt to meet all Sections R315-264-270 through 283 requirements pertaining to unit design, construction, operation, and maintenance. The Director shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the part B application.

(1) The first phase of the permit shall be effective as provided in Subsection R315-124-15(b).

(2) The second phase of the permit shall be effective as provided in Subsection R315-270-63(d).

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator shall submit to the Director a certification, signed by a person authorized to sign a permit application or report under Section R315-270-11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Director approves a later date.

(d) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of Section R315-264-272, the Director shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Sections R315-264-270 through 283, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under Section R315-270-42, or otherwise shall proceed as a modification under Subsection R315-270-41(a)(2). If such modifications are necessary, the second phase of the permit shall become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Director shall give notice of the final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in Subsection R315-124-15(b).

R315-270-65. Hazardous Waste Permit Program -- Research, Development, and Demonstration Permits.

(a) The Director may issue a research, development, and

demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Rules R315-264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in Subsection R315-270-64(d), and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Director deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the Director deems necessary to protect human health and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director deems necessary regarding testing and providing of information to the Director with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under Section R315-270-65, the Director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Rules R315-124 and 270 except that there may be no modification or waiver of regulations regarding financial responsibility, including insurance, or of procedures regarding public participation.

(c) The Director may order an immediate termination of all operations at the facility at any time the Director determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under Section R315-270-65 may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

R315-270-66. Hazardous Waste Permit Program -- Permits for Boilers and Industrial Furnaces Burning Hazardous Waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to the hazardous waste permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in Subsection R307-214-2(39), i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) which are incorporated by reference in R307-214-2(39) documenting compliance with all applicable requirements of Subsection R307-214-2(39), the requirements of Section R315-270-66 do not apply. The requirements of Section R315-270-66 do apply, however, if the Director determines certain provisions are necessary to ensure compliance with Subsections R315-266-102(e)(1) and 102(e)(2)(iii) if owners and operators elect to comply with Subsection R315-270-235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the Sections R315-266-105, 106, and 107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with Subsections R315-270-10(k), 10(l), 32(b)(2), and 32(b)(3).

(a) General. Owners and operators of new boilers and industrial furnaces, those not operating under the interim status standards of Section R315-266-103, are subject to Subsections R315-270-66(b) through (f). Boilers and industrial furnaces

operating under the interim status standards of Section R315-266-103 are subject to Subsection R315-270-66(g).

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Director shall establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section R315-270-42.

(i) Applicants shall submit a statement, with part B of the permit application that suggests the conditions necessary to operate in compliance with the standards of Sections R315-266-104 through 107 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in Subsection R315-266-102(e).

(ii) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections R315-266-104 through 107.

(2) Trial burn period. For the duration of the trial burn, the Director shall establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of Sections R315-266-104 through 107 and determining adequate operating conditions under Subsection R315-266-102(e). Applicants shall propose a trial burn plan, prepared under Subsection R315-270-66(c), to be submitted with part B of the permit application.

(3) Post-trial burn period.

(i) 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 to reflect the trial burn results, the Director shall establish the operating requirements most likely to ensure compliance with the performance standards of Sections R315-266-104 through 107.

(ii) Applicants shall submit a statement, with part B of the application that identifies the conditions necessary to operate during this period in compliance with the performance standards of Sections R315-266-104 through 107. This statement should include, at a minimum, restrictions on the operating requirements provided by Subsection R315-266-102(e).

(iii) The Director shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections R315-266-104 through 107.

(4) Final permit period. For the final period of operation, the Director shall develop operating requirements in conformance with Subsection R315-266-102(e) that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of Sections R315-266-104 through 107. Based on the trial burn results, the Director shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to Section R315-270-42.

(c) Requirements for trial burn plans. The trial burn plan shall include the following information. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of Subsections R315-270-66(c)(1) through (9):

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in appendix VIII, of Rule R315-261, that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for this exclusion explained. The waste analysis shall be conducted in accordance with appropriate analytical techniques.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(i) Manufacturer's name and model number of the boiler or industrial furnace;

(ii) Type of boiler or industrial furnace;

(iii) Maximum design capacity in appropriate units;

(iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) Capacity of hazardous waste feed system;

(vi) Description of automatic hazardous waste feed cutoff system(s);

(vii) Description of any air pollution control system; and

(viii) Description of stack gas monitoring and any pollution control monitoring systems.

(4) 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.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Director's decision under Subsection R315-270-66(b)(2).

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in Sections R315-266-104 through 107.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of Section R315-270-66(c) and the criteria in Subsection R315-270-66(b)(2).

(d) Trial burn procedures.

(1) A trial burn shall be conducted to demonstrate conformance with the standards of Sections R315-266-104 through 107 under an approved trial burn plan.

(2) The Director shall approve a trial burn plan if the Director finds that:

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of Sections R315-266-104 through 107;

(ii) The trial burn itself shall not present an imminent hazard to human health and the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under Subsection R315-266-102(e); and

(iv) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The Director shall send a notice to all persons on the facility mailing list as set forth in Subsection R315-124-10(c)(1)(ix) and to the appropriate units of State and local government as set forth in Subsection R315-124-10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Director.

(ii) This notice shall contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(4) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in Subsection R315-270-66(c). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(5) All data collected during any trial burn shall be submitted to the Director following completion of the trial burn.

(6) All submissions required by Subsection R315-270-66(d) shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section R315-270-11.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under Subsection R315-266-104(a), the Director shall specify, based on the hazardous waste analysis data and other information in the trial burn plan, as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs shall be specified by the Director based on information including the Director's estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Sections R315-261-30 through 35, the hazardous waste organic constituent(s) identified in Appendix VII of Rule R315-261 as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams; hazardous waste, other fuels, and industrial furnace feedstocks;

(2) When a DRE trial burn is required under Subsection R315-266-104(a):

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Subsection R315-266-104(a);

(3) When a trial burn for chlorinated dioxins and furans is

required under Subsection R315-266-104(e), a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, or HCl/Cl₂ is required under Section R315-266-105, or Subsections R315-266-106(c) or (d), or Subsections R315-266-107(b)(2) or (c), a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl₂), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or HCl/Cl₂ is required under Subsections R315-266-104(a), 106(c) or (d), or 107(b)(2) or (c), a quantitative analysis of the scrubber water, if any; ash residues; other residues; and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Director may specify as necessary to ensure that the trial burn shall determine compliance with the performance standards in Sections R315-266-104 through 107 and to establish the operating conditions required by Subsection R315-266-102(e) as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of Sections R315-266-104 through 107 and of determining adequate operating conditions under Section R315-266-103, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of Section R315-266-103 shall either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of Section R315-270-66 or submit other information as specified in Subsection R315-270-22(a)(6). The Director shall announce the Director's intention to approve of the trial burn plan in accordance with the timing and distribution requirements of Subsection R315-270-66(d)(3). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for Director approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application shall complete the trial burn and submit the results specified in Subsection R315-270-66(f) with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn shall be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

R315-270-68. Hazardous Waste Permit Program -- Remedial Action Plans (RAPs).

Remedial Action Plans (RAPs) are special forms of permits that are regulated under Sections R315-270-79 through 230.

R315-270-70. Hazardous Waste Permit Program -- Qualifying for Interim Status.

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State or

Federal Act that render the facility subject to the requirement to have a hazardous waste permit shall have interim status and shall be treated as having been issued a permit to the extent the owner or operator has:

(1) Complied with the requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity or the notification requirements of Rules R315-260 through 266, 268 and 270.

Comment: Some existing facilities may not be required to file a notification under section 3010(a) of RCRA. These facilities may qualify for interim status by meeting Subsection R315-270-70(a)(2).

(2) Complied with the requirements of Section R315-270-10 governing submission of part A applications;

(b) Failure to qualify for interim status. If the Director has reason to believe upon examination of a part A application that it fails to meet the requirements of Section R315-270-13, the Director shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the Director's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in the owner or operator's part A application. If, after such notification and opportunity for response, the Director determines that the application is deficient the Director may take appropriate enforcement action.

(c) Subsection R315-270-70(a) shall not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under Federal or State authority has been previously terminated.

R315-270-71. Hazardous Waste Permit Program -- Operation During Interim Status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in part A of the permit application;

(2) Employ processes not specified in part A of the permit application; or

(3) Exceed the design capacities specified in part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at Rule R315-265.

R315-270-72. Hazardous Waste Permit Program -- Changes During Interim Status.

(a) Except as provided in Subsection R315-270-72(b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in part A of the permit application and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification if the owner or operator submits a revised part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised part A permit application prior to such a change, along with a justification explaining the need for the change, and the Director approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised part A permit application prior to such change, along with a justification explaining the need for the change, and the Director approves the change because:

(i) The change is necessary to prevent a threat to human health

and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of Sections R315-265-140 through 150, until the new owner or operator has demonstrated to the Director that the owner or operator is complying with the requirements of Sections R315-265-140 through 150. The new owner or operator shall demonstrate compliance with Sections R315-265-140 through 150 within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Sections R315-265-140 through 150, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Sections R315-265-140 through 150 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued under Subsection 19-6-105(d) or by EPA under section 3008(h) or other Federal authority, or by a court in a judicial action brought by EPA or by an authorized State. Changes under Subsection R315-270-72(a)(5) are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under Subsection R315-270-72(b), changes listed under Subsection R315-270-72(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of Section R315-265-193 for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o).

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued under Subsection 19-6-105(d), or by EPA under section 3008(h) or other Federal authority, or by a court in a judicial proceeding brought by EPA or an authorized State, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Rule R315-268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Rule R315-268 or RCRA section 3004.

(7) Addition of newly regulated units under Subsection R315-270-72(a)(6).

(8) Changes necessary to comply with standards under 40

CFR part 63, Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors, which is incorporated by reference in Subsection R307-214-2(39).

R315-270-73. Hazardous Waste Permit Program – Termination of Interim Status.

Interim status terminates when:

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under Sections R315-270-79 through 230 is made.

(b) Interim status is terminated as provided in Subsection R315-270-10(e)(5).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a part B application for a permit for such facility prior to that date; and

(2) The owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Federal Act, or Section 19-6-108, that render the facility subject to the requirement to have a hazardous waste permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a part B application for a hazardous waste permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under Subsections R315-270-72(a)(1), (2) or (3), on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(f) For owners and operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility, other than a land disposal or an incinerator facility, which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for the facility by November 8, 1988.

R315-270-79. Hazardous Waste Permit Program – Why Sections R315-79 through 230 Written In A Special Format?

Sections R315-270-79 through 230 are written in a special format to make it easier to understand the regulatory requirements. Like other rules adopted the Board, this establishes enforceable legal requirements. For Sections R315-270-79 through 230, "I" and "you" refer to the owner/operator.

R315-270-80. Hazardous Waste Permit Program – What is a RAP?

(a) A RAP is a special form of hazardous waste permit that you, as an owner or operator, may obtain, instead of a permit issued under Sections R315-270-3 through 66, to authorize you to treat, store, or dispose of hazardous remediation waste, as defined in Section R315-260-10, at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed

in limited circumstances under Section R315-270-230.

(b) The requirements in Sections R315-270-3 through 66 do not apply to RAPs unless those requirements for traditional permits are specifically required under Sections R315-270-80 through 230. The definitions in Section R315-270-2 apply to RAPs.

(c) Notwithstanding any other provision of Rule R315-270 or Rule R315-124, any document that meets the requirements in Section R315-270-80 constitutes a hazardous waste permit Section 19-6-108.

(d) A RAP may be:

(1) A stand-alone document that includes only the information and conditions required by Sections R315-270-79 through 230; or

(2) Part, or parts, of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by Sections R315-270-79 through 230.

(e) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

R315-270-85. Hazardous Waste Permit Program – When Do I Need a Rap?

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a permit under Section R315-270-1, you shall either obtain:

(1) A permit according to Sections R315-270-3 through 66; or

(2) A RAP according to Sections R315-270-79 through 230.

(b) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under Sections R315-270-79 through 230.

(c) You may obtain a RAP for managing hazardous remediation waste at an already permitted hazardous waste facility. You shall have these RAPs approved as a modification to your existing permit according to the requirements of Section R315-270-41 or 42 instead of the requirements in Sections R315-270-79 through 230. When you submit an application for such a modification, however, the information requirements in Subsections R315-270-42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you shall submit the information required under Section R315-270-110. When your permit is modified the RAP becomes part of the hazardous waste permit. Therefore when your permit, including the RAP portion, is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in Sections R315-270-40 through 42, revoked and reissued according to the applicable requirements in Sections R315-270-41 and 43, terminated according to the applicable requirements in Section R315-270-43, and expire according to the applicable requirements in Sections R315-270-50 and 51.

R315-270-90. Hazardous Waste Permit Program – Does My Rap Grant Me Any Rights or Relieve Me of Any Obligations?

The provisions of Section R315-270-4 apply to RAPs. Note: The provisions of Subsection R315-270-4(a) provide you assurance that, as long as you comply with your RAP, the Director shall consider you in compliance with the rules adopted under Sections 19-6-101 through 125, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in Section R315-270-4.

R315-270-95. Hazardous Waste Permit Program – How Do I Apply for a Rap?

To apply for a RAP, you shall complete an application, sign it, and submit it to the Director according to the requirements in Sections R315-270-79 through 230.

R315-270-100. Hazardous Waste Permit Program – Who Shall Obtain a Rap?

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner shall also sign the RAP application.

R315-270-105. Hazardous Waste Permit Program – Who Shall Sign the Application and Any Required Reports for a Rap?

Both the owner and the operator shall sign the RAP application and any required reports according to Subsections R315-270-11(a), (b), and (c). In the application, both the owner and the operator shall also make the certification required under Subsection R315-270-11(d)(1). However, the owner may choose the alternative certification under Subsection R315-270-11(d)(2) if the operator certifies under Subsection R315-270-11(d)(1).

R315-270-110. Hazardous Waste Permit Program – What Shall I Include in My Application for a Rap?

You shall include the following information in your application for a RAP:

- (a) The name, address, and EPA identification number of the remediation waste management site;
- (b) The name, address, and telephone number of the owner and operator;
- (c) The latitude and longitude of the site;
- (d) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;
- (e) A scaled drawing of the remediation waste management site showing:
 - (1) The remediation waste management site boundaries;
 - (2) Any significant physical structures; and
 - (3) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;
- (f) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This shall include information on:
 - (1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;
 - (2) An estimate of the quantity of these wastes; and
 - (3) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of Rule R315-268, as applicable;
- (g) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of Rules R315-264, 266, and 268;
- (h) Such information as may be necessary to enable the Director to carry out his duties as is required for permits under Subsection R315-270-14(b)(20);
- (i) Any other information the Director decides is necessary for demonstrating compliance with Sections R315-270-79 through 230 or for determining any additional RAP conditions that are necessary to protect human health and the environment.

R315-270-115. Hazardous Waste Permit Program – What If I Want to Keep This Information Confidential?

Sections 63G-2-101 through 901 allows you to claim as confidential any or all of the information you submit to the Director under Sections R315-270-79 through 230. You shall assert any such claim by following the requirements of Section 63G-2-309. If you do assert a claim at the time you submit the information, the Director shall treat the information according to the procedures in Sections 63G-2-101 through 901. If you do not assert a claim at the time you submit the information, the Director may make the

information available to the public without further notice to you. The Director shall deny any requests for confidentiality of your name and/or address.

R315-270-120. Hazardous Waste Permit Program – To Whom Shall I Submit My Rap Application?

You shall submit your application for a RAP to the Director for approval.

R315-270-125. Hazardous Waste Permit Program – If I Submit My Rap Application as Part of Another Document, What Shall I Do?

If you submit your application for a RAP as a part of another document, you shall clearly identify the components of that document that constitute your RAP application.

R315-270-130. Hazardous Waste Permit Program – What Is the Process for Approving or Denying My Application for a Rap?

(a) If the Director tentatively finds that your RAP application includes all of the information required by Section R315-270-110 and that your proposed remediation waste management activities meet the regulatory standards, the Director shall make a tentative decision to approve your RAP application. The Director shall then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to Sections R315-270-79 through 230.

(b) If the Director tentatively finds that your RAP application does not include all of the information required by Section R315-270-110 or that your proposed remediation waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Director requests, or to correct any deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director shall prepare a notice of intent to deny your RAP application and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in Sections R315-270-79 through 230. The Director may deny the RAP application either in its entirety or in part.

R315-270-135. Hazardous Waste Permit Program – What Shall the Director Include in a Draft Rap?

If the Director prepares a draft RAP, it shall include the:

- (a) Information required under Subsections R315-270-110(a) through (f);
- (b) The following terms and conditions:
 - (1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of Rules R315-264, 266, and 268, including any recordkeeping and reporting requirements. In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of Rules R315-264, 266, and 268 into the RAP or establish site-specific conditions as required or allowed by Rules R315-264, 266, and 268;
 - (2) Terms and conditions in Section R315-270-30;
 - (3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in Section R315-270-170; and
 - (4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and
 - (c) If the draft RAP is part of another document, as described in Subsection R315-270-80(d)(2), the Director shall clearly identify the components of that document that constitute the draft RAP.

R315-270-140. Hazardous Waste Permit Program – What Else Shall the Director Prepare in Addition to the Draft Rap or Notice of Intent to Deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he shall then:

- (a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;
- (b) Compile an administrative record, including:
 - (1) The RAP application, and any supporting data furnished by the applicant;
 - (2) The draft RAP or notice of intent to deny;
 - (3) The statement of basis and all documents cited therein, material readily available at the Division's office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis; and
 - (4) Any other documents that support the decision to approve or deny the RAP; and
- (c) Make information contained in the administrative record available for review by the public upon request.

R315-270-145. Hazardous Waste Permit Program – What Are the Procedures for Public Comment on the Draft Rap or Notice of Intent to Deny?

- (a) The Director shall:
 - (1) Send notice to you of intent to approve or deny your RAP application, and send you a copy of the statement of basis;
 - (2) Publish a notice of intent to approve or deny your RAP application in a major local newspaper of general circulation;
 - (3) Broadcast intent to approve or deny your RAP application over a local radio station; and
 - (4) Send a notice of intent to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.
- (b) The notice required by Subsection R315-270-145(a) shall provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.
- (c) The notice required by Subsection R315-270-145(a) shall include:
 - (1) The name and address of the office processing the RAP application;
 - (2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;
 - (3) A brief description of the activity the RAP will regulate;
 - (4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;
 - (5) A brief description of the comment procedures, and any other procedures by which the public may participate in the RAP decision;
 - (6) If a hearing is scheduled, the date, time, location and purpose of the hearing;
 - (7) If a hearing is not scheduled, a statement of procedures to request a hearing;
 - (8) The location of the administrative record, and times when it will be open for public inspection; and
 - (9) Any additional information the Director considers necessary or proper.
- (d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director shall hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The

hearing shall include an opportunity for any person to present written or oral comments. Whenever possible, the Director shall schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in Subsection R315-270-145(a). This notice shall, at a minimum, include the information required by Subsection R315-270-145(c) and:

- (1) Reference to the date of any previous public notices relating to the RAP application;
- (2) The date, time and place of the hearing; and
- (3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

R315-270-150. Hazardous Waste Permit Program – How Will the Director Make a Final Decision on My Rap Application?

- (a) The Director shall consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.
- (b) If the Director determines that your RAP includes the information and terms and conditions required in Section R315-270-135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.
- (c) If the Director determines that your RAP does not include the information required in Section R315-270-135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.
- (d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in Sections R315-270-79 through 230.
- (e) When the Director issues a final RAP decision, the Director shall refer to the procedures for appealing the decision under Section R315-270-155.
 - (f) Before issuing the final RAP decision, the Director shall compile an administrative record. Material readily available at the Division office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP shall include information in the administrative record for the draft RAP, see Subsection R315-270-140(b), and:
 - (1) All comments received during the public comment period;
 - (2) Tapes or transcripts of any hearings;
 - (3) Any written materials submitted at these hearings;
 - (4) The responses to comments;
 - (5) Any new material placed in the record since the draft RAP was issued;
 - (6) Any other documents supporting the RAP; and
 - (7) A copy of the final RAP.
 - (g) The Director shall make information contained in the administrative record available for review by the public upon request.

R315-270-155. Hazardous Waste Permit Program – May the Decision to Approve or Deny My Rap Application Be Administratively Appealed?

- (a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application under Section R315-124-19. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions

under Section R315-124-15 (or a decision under Section R315-270-29 to deny a permit for the active life of a hazardous waste management facility or unit).

(b) This appeal is a prerequisite to seeking judicial review of these actions.

R315-270-160. Hazardous Waste Permit Program – When Does My Rap Become Effective?

Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:

- (a) The Director specifies a later effective date in his decision;
- (b) You or another person has appealed your RAP under R315-270-155 (if your RAP is appealed, and the request for review is granted under Section R315-270-155, conditions of your RAP are stayed according to Section R315-124-16 of this chapter); or
- (c) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

R315-270-165. Hazardous Waste Permit Program – When May I Begin Physical Construction of New Units Permitted Under the Rap?

You shall not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

R315-270-170. Hazardous Waste Permit Program – After My Rap Is Issued, How May it Be Modified, Revoked and Reissued, or Terminated?

In your RAP, the Director shall specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures shall provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional hazardous waste permit, as allowed under Subsection R315-270-85(c), then the RAP will be modified according to the applicable requirements in Sections R315-270-40 through 42, revoked and reissued according to the applicable requirements in Sections R315-270-41 and 43, or terminated according to the applicable requirements of Section R315-270-43.

R315-270-175. Hazardous Waste Permit Program – for What Reasons May the Director Choose to Modify My Final Rap?

(a) The Director may modify your final RAP on his own initiative only if one or more of the following reasons listed in Section R315-27-175 exist(s). If one or more of these reasons do not exist, then the Director shall not modify your final RAP, except at your request. Reasons for modification are:

- (1) You made material and substantial alterations or additions to the activity that justify applying different conditions;
- (2) The Director finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;
- (3) The standards or regulations on which the RAP was based have changed because of new or amended statutes, rules, or by judicial decision after the RAP was issued;
- (4) If your RAP includes any schedules of compliance, the Director may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;
- (5) You are not in compliance with conditions of your RAP;
- (6) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(7) The Director has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(8) You have notified the Director, as required in the RAP under Subsection R315-270-30(l)(3)) of a proposed transfer of a RAP.

(b) Notwithstanding any other provision in Section R315-270-175, when the Director reviews a RAP for a land disposal facility under Section R315-270-195, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Rules R315-124, 260 through 266 and 270.

(c) The Director shall not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

R315-270-180. Hazardous Waste Permit Program – for What Reasons May the Director Choose to Revoke and Reissue My Final Rap?

(a) The Director may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Director shall not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in Subsections R315-270-175(a)(5) through (8) if the Director determines that revocation and reissuance of your RAP is appropriate.

(b) The Director shall not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

R315-270-185. Hazardous Waste Permit Program – for What Reasons May the Director Choose to Terminate My Final Rap, or Deny My Renewal Application?

The Director may terminate your final RAP on his own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in Subsections R315-270-175(a)(5) through (7) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

R315-270-190. Hazardous Waste Permit Program – May the Decision to Approve or Deny a Modification, Revocation and Reissuance, or Termination of My Rap Be Administratively Appealed?

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to Section R315-270-155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to deny a request for modification, revocation and reissuance, or termination. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is found in Rule R305-7

R315-270-195. Hazardous Waste Permit Program – When Will My RAP Expire?

RAPs shall be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, the Director shall review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Director shall follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in Rules adopted under Section 19-6-101 through 125.

R315-270-200. Hazardous Waste Permit Program – How May I Renew My RAP if it Is Expiring?

If you wish to renew your expiring RAP, you shall follow the process for application for and issuance of RAPs in Sections R315-270-79 through 230.

R315-270-205. Hazardous Waste Permit Program – What Happens If I Have Applied Correctly for a Rap Renewal But Have Not Received Approval by the Time My Old Rap Expires?

If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

R315-270-210. Hazardous Waste Permit Program – What Records Shall I Maintain Concerning My Rap?

You are required to keep records of:

(a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and

(b) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

R315-270-215. Hazardous Waste Permit Program – How Are Time Periods in the Requirements in Sections R315-27-79 through 230 and My Rap Computed?

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event. For example, if your RAP specifies that you shall close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event. For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator shall submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator shall submit the revised RAP application no later than October 3, so that the 90th day would be December 31.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day. For example, if you wish to appeal the Director's decision to modify your RAP, then you shall file the appeal within 30 days after the Director has issued the final RAP decision. If the 30th day falls on Sunday, then you may submit your appeal by the Monday after. If the 30th day falls on July 4th, then you may submit your appeal by July 5th.

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him by mail, 3 days shall be added to the prescribed term. For example, if you wish to appeal the Director's decision to modify your RAP, then you shall file the appeal within 30 days after the Director has issued the final RAP decision. However, if the Director notifies you of his decision by mail, then

you may have 33 days to file.

R315-270-220. Hazardous Waste Permit Program – How May I Transfer My Rap to a New Owner or Operator?

(a) If you wish to transfer your RAP to a new owner or operator, you shall follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute "significant" modifications for purposes of Section R315-270-170. The new owner/operator shall submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator shall comply with the applicable requirements in Section R315-264-140 through 151 until the new owner or operator has demonstrated that he is complying with the requirements in Section R315-264-140 through 151. The new owner or operator shall demonstrate compliance with Section R315-264-140 through 151 within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with Section R315-264-140 through 151 to the Director, the Director shall notify you that you no longer need to comply with Section R315-264-140 through 151 as of the date of demonstration.

R315-270-230. Hazardous Waste Permit Program – May I Perform Remediation Waste Management Activities Under a Rap at a Location Removed From the Area Where the Remediation Wastes Originated?

(a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(b) If the Director determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.

(c) You shall request the RAP, and the Director shall approve or deny the RAP, according to the procedures and requirements in Sections R315-270-79 through 230.

(d) A RAP for an alternative location shall also meet the following requirements, which the Director shall include in the RAP for such locations:

(1) The RAP for the alternative location shall be issued to the person responsible for the cleanup from which the remediation wastes originated;

(2) The RAP is subject to the expanded public participation requirements in Sections R315-124-31, 32, and 33;

(3) The RAP is subject to the public notice requirements in Subsection R315-124-10(c);

(4) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time, you shall demonstrate compliance with this standard through the requirements in Subsection R315-270-14(b)(11). See definitions of terms in Subsection R315-264-18(a);

(e) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(1) Exclusion from facility-wide corrective action under Section R315-264-101; and

(2) Application of Subsection R315-264-1(j) in lieu of Sections R315-264-10 through 56.

R315-270-235. Hazardous Waste Permit Program – Integration with Maximum Achievable Control Technology (MACT)

Standards – Options For Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions From Startup, Shutdown, and Malfunction Events.

(a) Facilities with existing permits

(1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a hazardous waste-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to Subsections R315-264-340(b) and R315-266-100(b):

(i) Retain relevant permit conditions. Under this option, the Director shall:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) Revise relevant permit conditions.

(A) Under this option, the Director shall:

(I) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(II) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(I) You shall notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You shall notify the Director of such changes within five days of making such changes. You shall identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(II) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(Iii) Upon permit renewal, or, if warranted;

(Ii) By modifying the permit under Subsection R315-270-41(a) or Section R315-270-42.

(iii) Remove permit conditions. Under this option:

(A) The owner or operator shall document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39); and

(B) The Director shall remove permit conditions that are no longer applicable according to Subsections R315-264-340(b) and R315-266-100(b).

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Director of the Division of Air

Quality a Notification of Compliance documenting compliance with the standards of Subsection R315-214-2(39), which adopts 40 CFR 63 subpart EEE by reference, may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Director shall:

(I) Include, in the permit, conditions that ensure compliance with Subsections R315-264-345(a) and 345(c) or Subsections R315-266-102(e)(1) and 102(e)(2)(iii) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(II) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan; or

(ii) RCRA option B.

(A) Under this option, the Director shall:

(I) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(II) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(I) You shall notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You shall notify the Director of such changes within five days of making such changes. You shall identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(II) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(Iii) Upon permit renewal, or, if warranted;

(Ii) By modifying the permit under Subsection R315-270-41(a) or Section R315-270-42; or

(iii) CAA option. Under this option:

(A) The owner or operator shall document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39); and

(B) The Director shall omit from the permit conditions that are not applicable under Subsections R315-264-340(b) and R315-266-100(b).

(b) Interim status facilities

(1) Interim status operations. In compliance with Section R315-265-340 and Subsection R315-266-100(b), the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Rule R315-265 or 266 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Director of the Division of Air Quality a Notification of Compliance documenting compliance with the standards of Subsection R307-214-2(39), which adopts 40 CFR 63 subpart EEE by reference.

(i) RCRA option. Under this option, the owner or operator continues to comply with the interim status emission standards and

operating requirements of Rules R315-265 or 266 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) CAA option. Under this option, the owner or operator is exempt from the interim status standards of Rules R315-265 or 266 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Director that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39), has been approved by the Director of the Division of Air Quality under 40 CFR 63.1206(c)(2)(ii)(B), which is incorporated by reference in Subsection R307-214-2(39).

(2) Operations under a subsequent RCRA permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Rules R315-265 or 266 submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by Subsection R315-270-235(a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

(c) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to hazardous waste permit requirements after October 12, 2005 shall control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) Comply with the requirements specified in 40 CFR 63.1206(c)(2), which is incorporated by reference in Subsection R307-214-2(39); or

(2) Request to include in the hazardous waste permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The Director shall specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

KEY: hazardous waste
August 31, 2017

19-6-105
19-6-106

R357. Governor, Economic Development.**R357-15. Enterprise Zone Tax Credit.****R357-15-1. Authority.**

(1) Subsection 63N-2-213(6) requires the office to make rules establishing the form and content of an application for an Enterprise Zone tax credit, the documentation required to receive an Enterprise Zone tax credit, and the administration of the program, including relevant timelines and deadlines.

R357-15-2. Definitions.

The definitions below are in addition to or serve to clarify the definitions found in Section 63N-2-202, Section 59-7-614.10, and Section 59-10-1037.

(1) "Annual investment", "Investment" or "Qualifying investment" means the purchase of most types of tangible property (except land) such as buildings, machinery, vehicles, furniture, and equipment that:

(a) qualifies for depreciation under the Internal Revenue Service's Form 4562; and

(b) is put into service at an operating address, of the business entity, that is within an enterprise zone designated by the office for the applicable tax year.

(2) "Baseline" means the highest count of employment positions that existed within the business entity during the previous three taxable years.

(3) "Qualified business use vehicle" means an automobile, light truck, heavy truck, van, utility vehicle, or motorcycle.

(4) "New full-time employee position" means a position that has been newly created in addition to the baseline filled by an employee working at least 30 hours per week:

(a) for a period of at least six consecutive months; and

(b) where the period ends in the tax year for which the credit is claimed.

(5) "Payment documentation" means a;

(a) bank statement;

(b) cleared check;

(c) signed and executed financing agreement; or

(d) signed statement from the seller confirming the payer, payee, date paid, and amount paid for cash payments.

(6) "Purchase documentation" means a bill of sale, contract of sale, receipt, invoice, or other documentation which identifies the buyer, seller, purchase price, item(s) purchased, and the date of purchase.

(7) "Value-added business entity" means a company that creates a change in the physical state or form of a product in a manner that enhances its value, thus expanding the customer base of the product. Examples include milling wheat into flour or making strawberries into jam.

R357-15-3. Application Form and Content.

(1) An application form will be provided by the Office and will contain the following content:

(a) General submission instructions;

(b) Types of tax credits available to be claimed;

(c) Criteria for qualification for each tax credit;

(d) Any required deadlines and relevant timelines; and

(e) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic format available to the public at business.utah.gov

(3) The application shall also be available in paper format for any person or entity that requests a paper copy via mail or telephone.

R357-15-4. Required Documentation and Verification Information.

(1) To claim any of the tax credits available under 63N-2-201 et. seq. the following basic information must be provided to the Office:

(a) business entity's name that is claiming a tax credit on a Utah Tax filing submission;

(b) contact name, email, phone number, mailing address and relevant title(s);

(c) the physical operating address where the business entity is located including a screenshot of the address pinpoint within the Enterprise Zone as found on locate.utah.gov.

(d) the business entity's tax identification number whether a federally provided Employer Identification Number (EIN) or a Social Security Number (SSN); and

(e) information as required under Section R357-15-3.

(2) To qualify for any of the Employment tax credits pursuant to Subsections 63N-2-213(7)(a) through (d) the following documentation and information is required:

(a) current total of all employees including the total of employees as reported to the Department of Workforce Services for the last three years;

(b) the number of new full-time employee positions created above the baseline.

(i) For each new full-time employee position above the baseline the applicant must provide:

(A) Employee Name;

(B) Employee wages paid;

(C) Employee hours worked;

(D) Employee Hire date and termination date id applicable;

(E) If applicable, proof of employer-sponsored health insurance program if the employer pays at least 50% of the premium cost;

(F) If applicable, evidence that the business entity adds value to agricultural commodities through manufacturing or processing, including a list of sample products or processes.

(3) To qualify for the private capital investment tax credit under Subsections 63N-2-213(7)(e) and (f) the following documentation and information is required:

(a) If the private capital investment is for the rehabilitation of a building in an Enterprise Zone the applicant must provide:

(i) The rehabilitated building's physical address

(ii) Documents showing the current owner such as the deed or mortgage documents;

(iii) The date the building was last occupied;

(iv) A current occupancy permit or certificate;

(v) Purchase documentation of all rehabilitation expenses totaling the amount the tax credit is calculated from;

(vi) One or more forms of payment documentation validating any rehabilitation expense with an amount claimed equal to or greater than the amount established by the office is paid in entirety; and

vii. Any other documentation requested by the Office including a sworn affidavit confirming the rehabilitation costs from the owner of the building if applicant is not the owner of the building.

(b) If the private capital investment is a qualifying investment in plant, equipment, or other depreciable property in an Enterprise Zone the applicant must provide:

(i) an itemized list of qualified investments being claimed for the credit on a template provided by the office;

(ii) purchase documentation for all investment claimed; and;

(iii) one or more forms of payment documentation validating an investment with an amount claimed that is equal to or greater than an amount established by the office is paid in entirety;

(iv) property and real estate investments also require;

(A) a settlement statement; and

(B) property tax notice with building and land values separated from total property value.

(V) qualified business use vehicle and other motor vehicle investments also require business use percentage.

R357-15-5. Application Review and Authorization Process for an Enterprise Zone Tax Credit.

(1) The Office shall review all submitted applications within a reasonable amount of time and approve or deny the application.

(a) The Office shall review all tax credits claimed and documentation provided.

(b) The Office may request additional documentation or information if the Office determines that further verification is required.

i. Failure to comply with a request for additional documentation may result in a denial of the application.

(2) The Office will issue tax credit certificates for all tax credits for which an applicant has applied, qualified and been approved by the Office.

(a) This Office may issue a partial approval if only parts of the application are determined to qualify.

(3) The Office must provide written notice that includes its reasoning when denying any or a portion of a tax credit application.

(4) If approved in whole or in part, the Office shall provide any necessary documents and instructions, approved by the Utah Tax Commission, for claiming the tax credit.

(5)(a) When a business entity is seeking to receive a tax credit for the purchase of a qualified business use vehicle, in conformity with Subsection 63N-2-213(7)(f), the office shall not grant a tax credit for the trade-in value of a qualified business use vehicle that the business entity traded into the purchase of the vehicle for which the tax credit is being sought.

(b) The amount claimed towards investment in a qualified business use vehicle or a motor vehicle described in subsection R357-15-4(3)(b)(v) is determined as acquisition cost, less any trade in value in accordance with subsection R357-15-5(5), multiplied by the business use percentage.

(6) The trade in value in a purchase may be claimed towards a state tax credit for private capital investment that is qualifying investment in plant, equipment, or other depreciable property when, in the purchase that qualifies as investment by the business entity, there was traded in:

(a) plant, equipment, or other depreciable property that qualifies for depreciation on IRS Form 4562 and is not a qualified business use vehicle;

(b) a qualified business use vehicle that was traded in by an individual who is an owner or officer of the applying business entity; or

(c) a building, property, or other real estate investment that qualifies for depreciation on IRS Form 4562.

(6) The Office may deny claims of investment for software purchases that are cloud services or software as a service.

(7) The Office may deny claims for investment purchased prior to the three previous taxable years.

(8) The Office may deny claims for Investments purchased from another entity with the same ownership.

(9) The Office may deny claims if the only connection to an enterprise zone for a business entity is a P.O. Box.

(10) The Office may deny claims for investment that was transferred from personal use to business use unless the original investment and personal use occurred within the same taxable year the asset was placed into service by the applying business entity.

(11) The Office may deny claims for state tax credits under Subsections 63N-2-213(7)(a)-(f) if 51% of a business entity's employees that are employed at facilities, that are within a designated enterprise zone, of a business entity do not reside within the county in which the enterprise zone is located or an enterprise zone that is immediately adjacent or contiguous to the county in which the enterprise zone is located as per section 63N-2-212.

August 12, 2019

63N-2-213(6)

R357-15-6. Appeal of Application Denial.

(1) A hearing contesting the denial of an application in whole or in part of an Enterprise Zone Tax Credit is designated as informal hearings.

KEY: enterprise zones, tax credits

**R386. Health, Disease Control and Prevention, Epidemiology.
R386-80. Local Public Health Emergency Funding Protocols.
R386-80-1. Authority and Purpose.**

(1) This rule establishes a local health emergency assistance program to be administered by the Utah Department of Health. This program establishes the Public Emergency Fund to be funded with money appropriated by the legislature or otherwise made available to the program fund as defined by this rule

(2) Monies that the legislature appropriates to the Program Fund are non-lapsing and must be used exclusively to provide emergency funding to local health departments. However, the Department may use money in the Program to cover its costs of administering the Program.

(3) Any interest earned on the balance of the funds in the Program shall be deposited to the General Fund.

R386-80-2. Definitions.

(1) Department - means the Utah Department of Health.

(2) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(3) Local Public Health Emergency - means an unusual event or series of events causing or resulting in a substantial risk or potential risk to the health of a significant portion of the population within the boundary of a local health department.

(4) Program - means the local health emergency assistance program established under this section.

(5) Program Fund - means money that the Legislature appropriates to the Department for use in the Program and other monies otherwise made available for use in the Program.

R386-80-3. Reimbursement of Local Health Departments.

(1) Upon the occurrence of a local public health emergency by the local health officer with the concurrence by the Executive Director of the Department, the local health department is eligible to receive reimbursement through the Public Emergency Funding Program for expenses incurred in responding to a local health emergency to the extent funding is available.

(2) The request for reimbursement from the fund shall include an itemized list of expenses incurred associated with the public health emergency. The list of expenses shall be in the format directed by the Department. The local health department is required to match funds received from the Program Fund. The total of the program reimbursement and the local match cannot exceed the total dollars expended on the emergency.

(3) If the Department receives requests for emergency funding from multiple local health departments during a similar time period for the same public health emergency, and the requests exceed the balance of the funding available, the Department shall allocate the distribution of available funds by an agreed upon formula with the Local Health Officers Association. Information contained in the local health department request for funding is subject to both audit and approval by the Department.

(4) The Local Health Officers Association and the Department shall, through a Memorandum of Agreement, include more specifically what constitutes a public health emergency, types of reimbursable expenses, and the formula to be used if multiple public health emergencies occur at similar times with not enough funding available.

R386-80-4. Department Reports.

(1) The Department shall submit a report each September to the Health and Human Services Interim Committee of the Utah Legislature summarizing program activities. The report shall consist of:

(a) A description of the requests for reimbursement from local health departments during the preceding 12 months;

(b) The amount of each reimbursement made from the Program Fund to local health departments; and,

(c) The current balance of the Program Fund.

(2) A copy of the report shall also be submitted to the appropriations subcommittee designated by the Executive Appropriations Committee of the Legislature.

R386-80-5. Record Keeping.

(1) The Department shall keep all financial records related to distribution of funds to local health departments according to established rules for such financial documents.

KEY: public health emergency

October 24, 2014

Notice of Continuation August 22, 2019

26-1-38

R392. Health, Disease Control and Prevention, Epidemiology and Laboratory Services.**R392-104. Feeding Disadvantaged Groups.****R392-104-1. Scope.**

(1) The scope of this rule is very narrow, only being directed at charitable organizations feeding disadvantaged groups as defined by this rule at an event free of any charge, admission fee or required or suggested donation.

(2) Charitable organizations which do not meet the requirements of R392-104, must meet the requirements of R392-100.

R392-104-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department Of Health or designated representative.

(3) "Disadvantaged Group" means a homeless or temporarily displaced group.

(4) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or designated representative.

(5) "Charitable Organization" means a group of any size who desire to feed disadvantaged groups under the requirements of this rule.

(6) "Event" for purposes of this rule means an organized activity where food is offered free of any charge, admission fee or required or suggested donation to a disadvantaged group.

R392-104-3. Permit and Certification Exemptions.

(1) Charitable organizations which feed disadvantaged groups as defined by this rule at an event free of any charge, admission fee or voluntary donation, are exempt from:

(a) the requirement of obtaining a food service operating permit from a local health department;

(b) the food safety manager requirements of R392-101; and

(c) the food handler requirements of R392-103.

(2) Charitable organizations that charge a fee or suggest a voluntary donation at the event are not exempt from R392-100, R392-101, and R392-103.

R392-104-4. Charitable Organization Requirements.

(1) A representative of a charitable organization shall notify the local health department of the intent to feed a disadvantaged group and shall provide a list of the date, location, and time of events and the charitable organization contact information. A charitable organization shall notify the local health department of any changes to the list before they occur.

(2) Charitable organizations shall contact a local health department and obtain information concerning food safety and safe food handler practices as required by this rule.

(3) Charitable organizations feeding a disadvantaged group shall provide instruction obtained from the local health department to those persons who will be functioning as food handlers at an event.

(4) Charitable organizations shall follow the food safety and safe food handler practices as provided in the information given by a local health department.

(5) Charitable organizations are subject to enforcement procedures outlined in UCA 26A-1-114.

R392-104-5 Local Health Department Requirements.

(1) Local health departments shall provide statewide uniform food safety and food handling information based on approved temporary event guidelines, Centers for Disease Control and Prevention five risk factors associated with food-borne illness outbreaks, and food safety principles as found in R392-100. Local health departments shall provide the charitable organization this information initially and after any updates have been made to the guidelines.

(2) Local health departments shall maintain a register of charitable organization events at no cost to the charitable organization.

KEY: public health, food services

September 12, 2014

Notice of Continuation August 20, 2019

26-1-30(2)

26-15-5

26-15a-104

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-71. Early and Periodic Screening, Diagnostic and Treatment Program.****R414-71-1. Introduction and Authority.**

(1) The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program provides comprehensive prevention, diagnostic, and treatment services for Medicaid members.

(a) Treatment or services that are necessary to correct or ameliorate defects and physical and mental illnesses or conditions.

(2) EPSDT services provide coverage of all medically necessary services included within the categories of mandatory and optional services listed in Subsection 1905(a) of the Social Security Act.

(3) The EPSDT Program is authorized by Subsections 1902(a)(43) and 1905(a)(4)(B) of the Social Security Act, 42 CFR 440.40(b), and 42 CFR Part 441, Subpart B.

R414-71-2. Definitions.

In addition to the definitions in Section R414-1-2, the following definition applies to this rule:

(1) "EPSDT" means "Early and Periodic Screening, Diagnosis, and Treatment" used to determine physical or mental defects in members. The EPSDT Program provides:

- (a) health care;
- (b) treatment; and
- (c) other measures to correct or ameliorate any defects and chronic conditions discovered.

R414-71-3. Member Eligibility Requirements.

(1) Eligible members who are enrolled in Traditional Medicaid, and are zero through 20 years of age, may receive EPSDT services.

(2) Individuals who are 19 through 20 years of age and enrolled in Non-Traditional Medicaid, Adult Expansion Medicaid, or Targeted Adult Medicaid, are not eligible for EPSDT services.

R414-71-4. Program Access Requirements.

(1) An eligible member must obtain EPSDT services from a Utah Medicaid enrolled provider.

(2) A member enrolled in a managed care entity must obtain EPSDT services through that entity.

R414-71-5. Service Coverage and Limitations.

(1) Screening and diagnostic services to determine physical or mental defects.

(2) Screening services include:

(a) a comprehensive health and developmental history, including the assessment of physical and mental development;

(b) dental and oral health screening;

(c) comprehensive physical examination;

(d) vision screening;

(e) hearing assessment;

(f) speech and language development;

(g) appropriate immunizations according to age and health history;

(h) laboratory tests, including blood lead level assessment appropriate to age and risk; and

(i) health education, including anticipatory guidance.

(3) When a screening indicates the need for further evaluation, diagnostic services must be provided.

(4) Medically necessary services are available for treatment of all physical and mental illnesses or conditions discovered by any screening or diagnostic procedures.

(5) Additional services include:

(a) chiropractic services;

(b) orthodontia;

(c) occupational therapy;

(d) physical therapy;

(e) speech-language services;

(f) private duty nursing;

(g) at a minimum, diagnosis and treatment for defects in vision, including eyeglasses;

(h) at a minimum, dental services for the relief of pain and infections, restoration of teeth, maintenance of dental health, including examinations, cleanings, and fluoride treatments;

(i) at a minimum, diagnosis and treatment for hearing defects, including hearing aids; and

(j) additional health care services coverable under Subsection 1905(a) of the Social Security Act and found to be medically necessary to treat, correct, or ameliorate illness and conditions discovered regardless of whether the service is covered in the Medicaid State Plan.

(6) The Department determines whether a service is medically necessary.

(7) Medically necessary services do not include:

(a) experimental or investigational treatments;

(b) reconstructive and cosmetic procedures as noted in Section R414-1-29;

(c) services for caregivers or for provider convenience; or

(d) duplicative services.

(8) The Department may consider the relative cost effectiveness of alternatives as part of the prior authorization process described in Section R414-1-2.

KEY: Medicaid**August 29, 2019****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-303. Coverage Groups.

R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

- (a) "Caretaker relative;"
- (b) "Family size;"
- (c) "Modified Adjusted Gross Income (MAGI);"
- (d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency

shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, Adults, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below the applicable income standard for the individual's family size. For a family that exceeds 16 persons, the Department adds \$62 to the income standard for each family member. The income standards are as follows:

TABLE

Family Size	Income Standard
1	\$438
2	\$544
3	\$678
4	\$797
5	\$912
6	\$1,012
7	\$1,072
8	\$1,132
9	\$1,196
10	\$1,257
11	\$1,320
12	\$1,382
13	\$1,443
14	\$1,505
15	\$1,569
16	\$1,630

(4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.

(5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.

(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

(7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid.

The infant must continue to be a Utah resident to receive coverage.

(8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility agency does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(8) An individual who is pregnant, and under 19 years of age as described in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

R414-303-6. 12-Month Transitional Medicaid.

The Department shall provide 12 months of extended medical assistance as set forth in 42 U.S.C. 1396r-6, when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Subsection 1931(c)(2) of the Social Security Act.

(1) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(2) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.

(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.

(2) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2015 ed. The Department also adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, effective January 1, 2016.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are under the responsibility of any state and meet the criteria of Subsection 1902(a)(10)(A)(i)(IX) of the Social Security Act. Former Foster Care Youth is the name of this coverage group.

(a) Coverage is available through the month in which the individual turns 26 years of age.

(b) There is no income or asset test for eligibility under this group.

(4) The Department elects to cover individuals who are in foster care under the responsibility of the State at the time the individual turns 18 years of age, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is under the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-9. Subsidized Adoptions and Kinship Guardianship.

(1) The Department adopts and incorporates by reference 42

CFR 435.115(e)(1), October 1, 2013 ed, in regard to Subsidized Adoption Medicaid.

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227, October 1, 2013 ed., which is adopted and incorporated by reference.

(3) The Department may not impose resource or income tests for a child eligible under a state subsidized adoption agreement.

(4) The Department adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, effective January 1, 2014, in regard to Kinship Guardianship Medicaid.

(5) The Department of Human Services determines eligibility for subsidized adoption and Kinship Guardianship Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) The definitions found in 42 CFR 435.1101, and the provisions for presumptive eligibility found in 42 CFR 435.1103 and 42 CFR 435.1110, apply to Section R414-303-11.

(2) The following definitions also apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive

eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) An individual determined presumptively eligible for adult coverage may receive presumptive eligibility through whichever of the following occurs first:

(a) Through the end of the month following the month of the presumptive determination;

(b) Through the end of the month in which the individual turns 65 years old; or

(c) Until the eligibility agency makes a determination for ongoing medical assistance.

(9) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups described in 42 CFR 435.110, 435.116, 435.118, 435.150, and Rule R414-312.

(10) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(11) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(12) The covered provider may not count as income the following:

(a) Veteran's Administration (VA) payments;

(b) Child support payments; or

(c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(13) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

(a) Parents or caretaker relatives;

(b) Children under 19 years of age;

(c) Former foster care children;

(d) Individuals with breast or cervical cancer; and

(e) Adult expansion.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

August 29, 2019

Notice of Continuation January 8, 2018

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-311. Targeted Adult Medicaid.****R414-311-1. Introduction and Authority.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Subsection 1115(f) of the Social Security Act.

(2) This rule establishes eligibility requirements for enrollment under the 1115 Demonstration Waiver for Adults without Dependent Children, also known as the Targeted Adult Medicaid program.

R414-311-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Chronically Homeless Individual" means an individual who has a substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic illness or disability; and

(a) is living or residing for at least 12 months, or on at least four separate occasions that amount to at least 12 months in the last three years, in a place not meant for human habitation, in a safe haven, or in an emergency shelter; or

(b) is living in supportive housing and has previously met the criteria established in Subsection R414-311-2(2)(a).

(2) "Dependent Child" means a child who is under 19 years of age and required to be included in the Targeted Adult Medicaid household size.

(3) "Individual Needing Treatment" means an individual who:

(a) is receiving General Assistance from the Department of Workforce Services and has been diagnosed with a substance use or mental health disorder;

(b) was discharged from the Utah State Hospital and was admitted due to a civil commitment; or

(c) is living or residing for at least 6 months within a 12 month period in a place not meant for human habitation, in a safe haven, or an emergency shelter, and has a substance use or serious mental health disorder.

(4) "Justice Involved Individuals" means an individual who:

(a) has complied with and substantially completed a substance use disorder treatment program while incarcerated in jail or prison; or

(b) was discharged from the Utah State Hospital and was admitted to the civil unit in connection with a criminal charge, or to the forensic unit due to a criminal offense, with which the individual was charged or convicted; or

(c) is involved with a drug or mental health court.

R414-311-3. General Provisions.

(1) The provisions in Rule R414-301 apply to all applicants and enrollees, except that applicants and enrollees are required to report only the following changes in circumstances:

(a) The individual moves out of state; or

(b) The individual enters a public institution or an institution for mental disease.

R414-311-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to applicants and enrollees.

(1) The following individuals are not eligible for Targeted Adult Medicaid:

(a) Individuals who do not meet the coverage group criteria of being chronically homeless, justice involved, or needing treatment as defined in Section R414-311-2;

(b) Individuals who have a dependent child under 19 years old; or

(c) Individuals eligible for a Medicaid program without a spenddown.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Targeted Adult Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Targeted Adult Medicaid.

(b) An individual may only enroll in Targeted Adult Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency only enrolls applicants during an open enrollment period. The eligibility agency may limit the number it enrolls and may stop enrollment at any time. The open enrollment period may be limited to a coverage group or a subgroup within the coverage group.

(4) The eligibility agency shall waive the open enrollment requirement for the following situations:

(a) The individual who was previously on Targeted Adult Medicaid, and is moving from another Medicaid program back to Targeted Adult Medicaid, is otherwise eligible, and there is no break in coverage between the medical programs;

(b) The individual is no longer eligible for PCN, is otherwise eligible, and there is no break in coverage between the two medical programs; or

(c) The enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

R414-311-5. Application, Eligibility Reviews and Improper Medical Assistance.

(1) Unless otherwise stated, the provisions of Rule R414-308 apply to applicants and enrollees.

(2) Subject to the provisions of Subsection R414-311-5(3), an individual who is determined eligible shall receive 12 months of coverage that begins with the first month of enrollment.

(3) Coverage for Targeted Adult Medicaid may end before the end of the 12-month certification period if the individual:

(a) turns 65 years old;

(b) moves out of state;

(c) becomes eligible for another Medicaid program;

(d) enters a public institution or an institution for mental disease, except as described in Section R414-302-6;

(e) is convicted of fraud; or

(f) leaves the household.

(4) An individual who leaves prison, jail or the Utah State Hospital must submit an application within 60 days of release or discharge.

(5) An enrollee must verify at each review that he meets the criteria of a coverage group as defined in Section R414-311-2. An enrollee who no longer meets criteria of a coverage group is no longer eligible for Targeted Adult Medicaid.

R414-311-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Targeted Adult Medicaid, the individual must have countable income at or below 5% of the federal poverty level (FPL).

KEY: Medicaid, Targeted Adult Medicaid, eligibility
August 29, 2019

26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-312. Adult Expansion Medicaid.****R414-312-1. Introduction and Authority.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Subsection 1115(f) of the Social Security Act.

(2) This rule establishes eligibility requirements for enrollment under the Primary Care Network 1115 Demonstration Waiver for Adults, also known as the Adult Expansion Medicaid program.

R414-312-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-312-3. General Provisions.

The provisions in Rule R414-301 apply to all applicants and enrollees.

R414-312-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to all applicants and enrollees.

(1) The following individuals are not eligible for Adult Expansion Medicaid:

(a) Individuals eligible for any Medicaid program without a spenddown; or

(b) Individuals eligible for or receiving Medicare.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Adult Expansion Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Adult Expansion Medicaid.

(b) An individual may only enroll in Adult Expansion Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency may only enroll applicants during an open enrollment period. The Department may limit the number it enrolls and may stop enrollment at any time.

(4) The eligibility agency shall waive the open enrollment requirement if the enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

R414-312-5. Application, Eligibility Reviews, and Improper Medical Assistance.

The provisions of Rule R414-308 apply to all applicants and enrollees.

R414-312-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Adult Expansion Medicaid, the individual must have countable income at or below 95% of the federal poverty level (FPL).

KEY: Medicaid, adult expansion, eligibility

August 29, 2019

26-18

R414. Health, Health Care Financing, coverage and Reimbursement Policy.**R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program.****R414-516-1. Introduction and Authority.**

This rule defines the participation requirements for the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule applies only to nursing facility providers who are part of a contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.

R414-516-2. Definitions.

The definitions in Rule R414-505 apply to this rule. In addition:

(1) "American Health Care Association (AHCA)" means the national association of long term and post-acute providers for quality care and services for frail, elderly, and disabled Americans.

(2) "Certification And Survey Provider Enhanced Reports (CASPER)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.

(3) "Certified Nurse Aid (CNA)" means any person who completes a nurse aid training and competency evaluation program (NATCEP) and passes the state certification examination.

(4) "Division" means the Division of Medicaid and Health Financing (DMHF).

(5) "Eden Certification" means a program achieving Eden Milestones as approved by the Eden Alternative organization.

(6) "Fair Rental Value (FRV)" means the definition provided in Attachment 4.19-D of the Medicaid State Plan.

(7) "Five-Star Quality Rating System" means a rating system developed by CMS to help consumers, their families, and other caregivers compare health inspection reports, staffing, and quality measures (QM) between nursing programs.

(8) "Nurse" means an individual who is licensed under Title 58, Chapter 31b as:

- (a) a licensed practical nurse (LPN);
- (b) a registered nurse (RN);
- (c) an advanced practice registered nurse (APRN); or
- (d) a nurse practitioner (NP).

(9) "Program" means each distinct NF program participating in the NF NSGO UPL program.

(10) "Qualified Activity Professional" means:

(a) a qualified therapeutic recreation specialist or an activities professional who is licensed or registered in the state of Utah;

(b) an activities professional who is recognized by an accrediting body;

(c) a person who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a therapeutic activities program;

- (d) an occupational therapist (OT); or
- (e) an occupational therapy assistant (OTA).

(11) "Qualified Clinician" means:

- (a) a physician;
- (b) a surgeon;
- (c) a chiropractic physician;
- (d) a physician assistant;
- (e) a physical therapist;
- (f) a physical therapist assistant;
- (g) an OT; or
- (h) an OTA.

(12) "Resident" means a Utah Medicaid eligible individual who resides in and receives nursing facility services in a Utah Medicaid-certified nursing facility.

R414-516-3. Quality Improvement Program Requirements of Participation.

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

(a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Section R414-516-6;

(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Section R414-516-6;

(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Section R414-516-6.

(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Section R414-516-6.

(3) When calculating compliance under Section R414-516-6, a program shall not count residents who are in the facility less than 14 days.

(4)(a) Each program shall submit to the Division a compliance form, using the current Division form, on or before January 31 following the end of the calendar year, documenting that the program qualifies to earn points under the selected QI program categories.

(b) A compliance form must be mailed or electronically mailed to the correct address found at <https://health.utah.gov/stplan/longtermcare/fqi.htm>.

(c) In all cases, no additional compliance forms, documentation, unless requested as part of an audit, or explanation will be accepted if submitted after the annual submission deadline.

(d) Any program that does not submit its compliance form by the deadline shall receive zero points for that program year.

(5) The Division does not require a provider that enters the NF NSGO UPL program for only part of a calendar year, based on provider participation start date, to comply with the QI provisions of Section R414-516-3 in the first program calendar year.

R414-516-4. Quality Awards.

(1) A program may earn QI points through achieving the following quality awards, certifications, and ratings:

(2) The AHCA National Quality Award;

(a) A program that has earned the Gold AHCA quality award may earn six QI points for the duration of the award;

(b) A program that has earned the Silver AHCA quality award may earn four QI points for the duration of the award;

(c) A program that has earned the Bronze AHCA quality award may earn two QI points for the duration of the award.

(3) The HealthInsight Quality Award;

(a) A program that has earned a HealthInsight Quality Award may earn two QI points for the year awarded.

(4) Eden Certification Milestones; and

(a) A program that achieves an Eden Certification Milestone at the time of implementation of this rule may receive QI points in the same formula for a program achieving the initial milestone;

(b) A program may earn, in the initial year of the achievement, one QI point for achieving milestone one;

(c) A program may earn, in the initial year of the achievement, three QI points for achieving milestone two and two QI points the following year;

(d) A program may earn, in the initial year of the achievement, five QI points for achieving milestone three, three QI points the following year, and two QI points the third year.

R414-516-5. Construction and Renovation.

A program may earn up to seven QI points by constructing or renovating its physical facility or increasing access to care by providing services in a rural county as follows:

(1) Constructing or renovating its physical facility:

(a) A program may earn seven QI points for having a FRV facility age of eight years or less;

(b) A program may earn five QI points for having a FRV facility age of fifteen years or less;

(c) A program may earn up to four QI points for using a

percentage of UPL monies on facility renovations. The percentage is calculated by dividing the monies spent on a major renovation, replacement beds, or additional beds as reported in the program's audited FRV Data Report as described in the Attachment 4.19-D of the Medicaid State Plan, (numerator) by the amount of NF NSGO UPL monies paid in the same period as the FRV Data Reported renovation project (denominator).

(i) A program may earn four QI points for using greater than 75 percent of UPL monies.

(ii) A program may earn two QI points for using greater than 50 percent of UPL monies.

(2) Access to care by providing services to Medicaid members in a rural county.

(a) A program located in a county other than Cache, Davis, Salt Lake, Utah, Washington, or Weber may receive one QI point.

(b) A program located in an area where no other Utah Medicaid-certified nursing facility is within a 35-mile radius may receive one QI point.

R414-516-6. Direct Resident Services.

A program may earn QI points by providing Direct Resident Services as follows:

(1) Providing a denture replacement policy. A program may earn one QI point by providing a denture replacement policy where the program will replace lost or damaged dentures for residents within 90 days of the loss or damage.

(2) Providing optional dining services. A program may earn up to three QI points for dining service options provided in the categories below:

(a) A program may earn one QI point for providing a menu option of at least five meal choices outside of the planned meal;

(b) A program may earn one QI point for providing a cook-to-order menu;

(c) A program may earn three QI points for providing a five-meal program for the entire calendar year; or

(d) A program may earn one QI point for providing a four-meal program for the entire calendar year.

(3) Providing a Preferred Snack Program with 80 percent compliance. A program may earn two QI points by providing distinct resident preferences for snacks.

(a) A program shall provide a snack survey including food and beverage options, snack time options, the date of the survey, and the name of the person completing the survey.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) A program shall provide the snack and beverage at each resident's preferred time.

(d) If a resident requires assistance for feeding, the facility shall provide a dining assistant during the snack.

(e) A program shall complete a snack survey for each distinct resident quarterly or as requested by the resident.

(f) The program shall calculate compliance by dividing the number of distinct residents who complete a preferred snack survey (numerator) by the number of distinct residents during the quarter, who desired to complete a snack survey (denominator).

(4) Providing a Preferred Bedtime Program with 80 percent compliance. A program may earn two QI points by providing resident preferences for bedtime.

(a) The program shall provide a bedtime survey, in which the resident was asked about preferred bedtime options and preferred rituals. The program must include the date of the survey and the name of the person who completed it.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) The program shall provide each resident their preferred bedtime options and rituals.

(d) The program shall complete a bedtime survey annually or as requested by the resident.

(e) The program shall calculate compliance by dividing the

number of distinct residents who complete a bedtime survey (numerator) by the number of distinct residents during the calendar year, subtracted by the distinct residents who declined to complete a bedtime survey (difference is denominator).

(5) Providing consistent CNA or nursing staff assignments to residents with 80 percent compliance. A program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents. The points may be earned by providing the same CNA or nurse for a distinct resident for 32 waking hours during a standard Sunday through Saturday week.

(a) A program may earn one QI point for having a staffing schedule providing consistent CNA's and nurses for the entire program.

(b) The program may earn one QI point for providing consistent CNA assignment to a distinct hall containing at least 10 residents.

(c) The program may earn two QI points for providing consistent CNA assignment to an entire program.

(d) The program may earn one point for providing consistent nurse assignment to a hall containing at least 10 residents.

(e) A program may earn two QI points for providing consistent nurse assignment to an entire program.

(f) The program shall provide the consistent assignment for 40 of 52 weeks during the calendar year.

(g) The program shall calculate compliance by dividing the number of distinct residents who have consistent assignment in the hall or program (numerator) by the number of distinct residents during the calendar year in the hall or program (denominator).

(6) Providing a Range of Motion (ROM) program to residents with 80 percent compliance. A program may earn four QI points by providing a ROM program to residents semi-annually by a qualified clinician; or, may earn two QI points by providing a ROM program to residents semi-annually by a restorative nurse aid under the direct supervision of a qualified clinician.

(a) The program shall include a ROM assessment, completed by a qualified clinician, for passive range of motion (PROM) or active range of motion (AROM) for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of which joint has limitations, the reduced anatomical motion to the joint, how the restriction limits function, the title and name of the person completing the plan of care (POC), and the date of the POC.

(b) If a reduction in ROM is found and the clinician recommends a ROM POC, the POC shall include:

(i) a goal to return the resident to the highest practicable level of function;

(ii) the frequency and duration of the POC;

(iii) the title and name of the person completing the POC; and

(iv) the date of the POC.

(c) If the program develops a POC for a resident, a qualified clinician or another qualified professional shall complete the POC under the supervision of a qualified clinician.

(d) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

(e) The program shall calculate compliance by dividing the number of distinct residents who received a ROM assessment semi-annually plus the number of residents refusing to complete a ROM assessment semi-annually (sum is numerator) by the number of distinct residents during the calendar year (denominator).

(7) Providing a One-on-One Activity program with 80% compliance. A program may earn up to four QI points by providing a one-on-one activity program. A one-on-one activity program shall provide a 30-minute minimum individual activity onsite or within the community each month for each resident; and

(a) A program may earn one QI point by providing a schedule for one-on-one activity participation for residents desiring to participate;

(b) A program may earn three QI points if compliant with

providing one-on-one activities;

(c) A qualified activity professional shall complete an activity interest (AI) survey for each resident including recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and title of the surveyor and the date the survey was completed;

(d) For each resident who desires to participate in a one-on-one activity program:

(e) A qualified activity professional shall develop a POC including the preferred list of activities and a method of grading the importance of the activities to the resident. The activity POC shall include:

(i) the activities to be completed during the one-on-one activity;

(ii) the goal of the activity;

(iii) what the activity is promoting

(iv) the date the POC was completed; and

(v) the title and name of the person completing the POC.

(f) The person who completes the activity with the resident shall document:

(i) the preferred activity completed;

(ii) the duration of the activity;

(iii) the goal of the activity;

(iv) which quality of life measures were promoted; and

(v) any relevant comments made by the resident.

(g) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

(h) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the nursing facility program shall document the refusal.

(i) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident and offer the one-on-one activity program annually.

(j) If a resident who initially refuses to participate in a one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

(k) The program shall calculate compliance by adding the number of distinct residents who participated in but declined a monthly one-on-one activity, the number of distinct residents who completed the program, and the number of distinct residents who declined to complete the program (distinct sum is numerator) divided by the number of distinct residents during the calendar year (denominator).

(8) Providing a Mobility Program to qualifying residents with 80 percent compliance. A program may earn four QI points by providing a mobility program to qualifying residents. The nursing facility program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during the calendar year.

(a) A nurse or qualified physician shall complete Section GG0170 Mobility of the MDS Version 3.0 for each Medicaid resident.

(b) A resident who achieves a score of 04, 05, or 06 on Sections D and J qualifies to participate in a walking program.

(c) The nurse or qualified physician who completes the mobility section shall establish a POC for the walking program to determine:

(i) the distance of the walk;

(ii) duration of the walk; and

(iii) the amount of assistance required by the resident, including mobility devices to be provided by the staff.

(d) The nursing facility program shall provide weekly documentation to illustrate program completion, including modifications to a residents walking program.

(e) If a resident qualifies for but refuses to participate in a

walking program, the nurse shall document the refusal and complete the mobility, sit-stand, and one-step command surveys annually.

(f) If a resident initially declines to participate in a walking program and then requests to engage in a walking program before the annual follow-up surveys, the program shall complete the survey and develop a walking POC for the resident.

(g) The nursing facility program shall calculate compliance by adding the number of distinct residents who completed the walking program with the distinct residents who qualified for but requested limited participation in the program, and residents who qualified for but declined participation in the walking program (distinct sum is numerator) by the number of distinct residents who qualified for a walking program during the calendar year (denominator).

R414-516-7. Quality Metrics.

(1) A program may earn up to six QI points for demonstrating quality metric scores equal to or better than the industry average noted.

(a) Quality metrics shall include:

(i) CMS 5-Star quality measure rating, for long-stay residents, obtained from CMS online data sources. The industry average is 3.62. To qualify, the nursing facility program must equal or exceed the industry average.

(ii) CASPER Quality Measures for urinary tract infections obtained from CMS online data sources. The industry average is 6.68%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iii) CASPER Quality Measures for pressure ulcers obtained from CMS online data sources. The industry average is 6.15%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iv) CASPER Quality Measures for falls with a major injury obtained from CMS online data sources. The industry average is 4.17%. To qualify, the nursing facility program must have less than or equal to the industry average.

(v) Nurse staffing hours per resident day obtained from CMS online data sources. The industry average is 3.81. To qualify, the nursing facility program must equal or exceed the industry average.

(vi) Survey deficiency scope and severity obtained from the Utah Bureau of Health Facility Licensing, Certification and Resident Assessment. The industry average is 3.57. To qualify, the nursing facility program must have less than or equal to the industry average.

(b) A program may earn QI points as follows:

(i) Four QI points may be earned for achieving metrics scores equal to or superior to the industry average in greater than four of six targets;

(ii) Three QI points may be earned for achieving metrics scores equal to or superior to the industry average in four of six targets; or

(iii) Two QI points may be earned for achieving metrics scores equal to or superior to the industry average in three of six targets.

(c) A program may earn QI points from demonstrating metrics score improvement as follows:

(i) Two QI points may be earned by demonstrating metrics score improvement in greater than four of six targets; or

(ii) One QI point may be earned by demonstrating metrics score improvement in four of six targets.

(2) One QI point may be earned by demonstrating a 20% improvement in two specific quality metrics scores on the CASPER report at the end of the 12-month data (October through September) period as compared to the prior 12-month data period.

R414-516-8. Staffing.

(1) A program may earn up to four QI points for providing employee retention programs in the categories below:

(a) A program may earn one QI point by offering health insurance to all full-time employees;

(b) A program may earn one QI point by demonstrating

improved staff retention of 20% facility wide compared to the previous calendar year. The program shall calculate staff retention by dividing the number of staff who separated from the program during the calendar year (numerator) by the number of all staff employed during the calendar year (denominator), and subtracting the retention percentage of the previous calendar year from the retention percentage of the current calendar year;

(c) A program may earn two QI points by demonstrating a staff turnover rate below 50% during the calendar year. The program shall calculate turnover rate by dividing the number of distinct staff who separated from the program during the calendar year (numerator) by the number of all distinct staff employed during the calendar year (denominator).

(d) A program may earn one QI point by offering:

(i) a 401K plan that includes an employer contribution; or

(ii) a pension or retirement program.

(e) A program may earn one QI point by:

(i) providing tuition reimbursement for formal education;

(ii) providing reimbursement for continuing education; or

(iii) providing reimbursement for certification courses.

(2) Providing staff training. A program may earn one QI point by providing staff training through a nursing facility industry-recognized source using virtual or onsite resources.

R414-516-9. Exceptions and Holdings.

(1) A program that does not earn the minimum required QI points during a calendar year shall:

(a) earn the number of QI points not achieved from that calendar year in addition to the required QI points the subsequent calendar year; and

(b) submit to the Division a plan of correction that details how the program will come into compliance with the QI Program.

(c) A plan of correction must be mailed electronically to the correct address found at <https://health.utah.gov/stplan/longtermcarenfqi.htm>.

(2) The Division shall remove from the UPL Seed Contract, a program that fails to earn the minimum QI points for a second consecutive year as required by Subsection R414-516-9(1)(a).

(a) Once the Division determines that the program failed to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.

(b) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

(c) If the program does not file an appeal or the Division's determination is upheld, the Division shall amend the UPL seed contract to remove the program effective the last day of the quarter in which the determination was made.

(3) If a program that has been removed from the UPL Seed Contract desires to be added back to the contract prospectively, the program shall demonstrate compliance to Subsection R414-516-3(1)(c) for one full year ("trial period") after the effective date of the removal.

(a) The program shall submit to the Division within 30 days of the trial period:

(i) the current compliance form; and

(ii) documentation of compliance with all QI programs in which points were earned.

(b) If the Division determines that the program was compliant during the trial period, the Division may add the program back to the UPL Seed Contract effective the first day of the quarter following the date compliance was determined.

(4) The Division may audit a program at any time to ensure compliance.

(a) The Division shall provide notice that indicates the period of the audit and the QI programs being audited.

(b) When an audit is performed, all documentation requested by the Division shall be postmarked or demonstrate proof of delivery to the Division within 10 business days of the request.

(c) Failure to submit the requested documentation in a timely manner shall result in the program forfeiting the QI points for the specific QI program category being audited.

(d) If an audit is completed, as applicable, the findings of the audit shall supersede the program's reported QI points.

(e) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

**KEY: Medicaid
August 29, 2019**

**26-1-5
26-18-3**

R432. Health, Family Health and Preparedness, Licensing.**R432-270. Assisted Living Facilities.****R432-270-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

- (1) The terms used in these rules are defined in R432-1-3.
- (2) In addition:
 - (a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
 - (i) memory and daily decision making ability;
 - (ii) ability to communicate effectively with others;
 - (iii) physical functioning and ability to perform activities of daily living;
 - (iv) continence;
 - (v) mood and behavior patterns;
 - (vi) weight loss;
 - (vii) medication use and the ability to self-medicate;
 - (viii) special treatments and procedures;
 - (ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
 - (x) leisure patterns and interests;
 - (xi) assistive devices; and
 - (xii) prosthetics.
 - (b) "Activities of daily living (ADL)":
 - (i) means those personal functional activities required for an individual for continued well-being, including:
 - (A) personal grooming, including oral hygiene and denture care;
 - (B) dressing;
 - (C) bathing;
 - (D) toileting and toilet hygiene;
 - (E) eating/nutrition;
 - (F) administration of medication; and
 - (G) transferring, ambulation and mobility.
 - (ii) are divided into the following levels:
 - (A) "Independent" means the resident can perform the ADL without help.
 - (B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.
 - (C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.
 - (c) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.
 - (d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
 - (e) "Hospice patient" means an individual who is admitted to a hospice program or agency.
 - (f) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
 - (g) "Monitoring device":
 - (i) means a video surveillance camera or a microphone or other device that captures audio; and
 - (ii) does not include:
 - (A) a device that is specifically intended to intercept wire,

electronic, or oral communication without notice to or the consent of a party to the communication; or

(B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.

(h) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(i) "Responsible person" means an individual who:

- (i) is designated in writing by a resident to receive communication on behalf of the resident; or

(ii) a legal representative.

(j) "Self-direct medication administration" means the resident can:

- (i) recognize medications offered by color or shape; and
 - (ii) question differences in the usual routine of medications.
- (k) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(l) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(m) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(n) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(o) "Social care" means:

- (i) providing opportunities for social interaction in the facility or in the community; or
- (ii) providing services to promote independence or a sense of self-direction.

(p) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

- (a) the facility construction can meet the individual's needs;
- (b) the individual's physical and mental needs are appropriate

to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management

experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I and Type II facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(5) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(6) Facility policies and procedures must be available to personnel at all times.

(7) Each employee must receive documented orientation to the facility and the job for which they are hired. Orientation shall

include the following:

- (a) job description;
- (b) ethics, confidentiality, and residents' rights;
- (c) fire and disaster plan;
- (d) policy and procedures;
- (e) reporting responsibility for abuse, neglect and exploitation; and
- (f) dementia specific training including:
 - (i) communicating with dementia patients and their caregivers;
 - (ii) communication methods and when they are appropriate;
 - (iii) types and stages of dementia including information on the physical and cognitive declines as the disease progresses;
 - (iv) person centered care principles; and
 - (v) how to maintain safety in the dementia patient environment.

(8) Each direct-care employee shall receive 16 hours of documented one-on-one training with a direct-care employee, with at least 3 months of experience and who has completed orientation, or the supervising nurse at the facility.

(a) This training is not transferrable to another facility and must include:

- (i) transfer assistance; and
- (ii) activities of daily living.

(b) Direct-care employees hired from a staffing agency must be certified nurse aides and are exempt from the 16 hours of one-on-one training.

(9) Each employee shall receive documented in-service training. The training shall be tailored to annually include all of the following subjects that are relevant to the employee's job responsibilities:

- (a) principles of good nutrition, menu planning, food preparation, and storage;
- (b) principles of good housekeeping and sanitation;
- (c) principles of providing personal and social care;
- (d) proper procedures in assisting residents with medications;
- (e) recognizing early signs of illness and determining when there is a need for professional help;
- (f) accident prevention, including safe bath and shower water temperatures;
- (g) communication skills which enhance resident dignity;
- (h) first aid;
- (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
- (j) Dementia/Alzheimer's specific training.

(10) The facility administrator shall annually receive a total of 4 hours of Dementia/Alzheimer's specific training.

(11) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(12) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(13) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

- (i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and
- (ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(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) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(14) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.

(15) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both

inside and outside the facility;

- (l) the right to send and receive mail unopened;
- (m) the right to have access to telephones to make and receive private calls;
- (n) the right to arrange for medical and personal care;
- (o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;
- (p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the locking of facility entrance doors if egress is maintained;
- (q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;
- (r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;
- (s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;
- (t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;
- (u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;
- (v) the right to personal privacy and confidentiality of personal and clinical records;
- (w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and
- (x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:
 - (i) medical condition;
 - (ii) the right to refuse treatment;
 - (iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and
 - (iv) the right to refuse to participate in experimental research.
- (6) The following items must be posted in a public area of the facility that is easily accessible by residents:
 - (a) the long term care ombudsmen's notification poster;
 - (b) information on Utah protection and advocacy systems; and
 - (c) a copy of the resident's rights.
- (7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.
- (8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.
 - (a) The facility shall provide private space for resident groups or family groups.
 - (b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.
 - (c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

- (1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.
- (2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

- (a) an interview with the resident and the resident's responsible person; and
- (b) the completion of the resident assessment.
- (3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.
- (4) A Type I facility:
 - (a) shall accept and retain residents who meet the following criteria:
 - (i) are ambulatory or mobile and are capable of taking life saving action in an emergency without the assistance of another person;
 - (ii) have stable health;
 - (iii) require no assistance or only limited assistance in the activities of daily living (ADL); and
 - (iv) do not require total assistance from staff or others with more than three ADLs.
 - (b) may accept and retain residents who meet the following criteria:
 - (i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person; and
 - (ii) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.
- (5) A Type II facility may accept and retain residents who meet the following criteria:
 - (a) require total assistance from staff or others in more than three ADLs, provided that:
 - (i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and
 - (ii) the resident is capable of evacuating the facility with the limited assistance of one person.
 - (b) are physically disabled but able to direct their own care; or
 - (c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.
- (6) Type I and Type II assisted living facilities shall not admit or retain a person who:
 - (a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others;
 - (b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or
 - (c) requires inpatient hospital, long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.
- (7) Type I and Type II assisted living facilities shall not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.
- (8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:
 - (a) room and board charges and charges for basic and optional services;
 - (b) provision for a 30-day notice prior to any change in established charges;
 - (c) admission, retention, transfer, discharge, and eviction policies;
 - (d) conditions under which the agreement may be terminated;
 - (e) the name of the responsible party;
 - (f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

- (g) refund provisions that address the following:
 - (i) thirty-day notices for transfer or discharge given by the facility or by the resident,
 - (ii) emergency transfers or discharges,
 - (iii) transfers or discharges without notice, and
 - (iv) the death of a resident.
- (9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:
 - (a) the facility keeps a copy of the physician's diagnosis and orders for care;
 - (b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and
 - (c) a facility may retain hospice patient residents who are not capable of exiting the facility without assistance with the following conditions:
 - (i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;
 - (ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;
 - (iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and
 - (iv) hospice residents who are not capable of exiting the facility without assistance comprise no more than 25 percent of the facility's resident census.
- (10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:
 - (a) the facility keeps a copy of the physician's diagnosis and orders for care;
 - (b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and
 - (c) if the hospice patient resident cannot evacuate the facility without significant assistance, the facility must:
 - (i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and
 - (ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

- (1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:
 - (a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.
 - (b) The resident fails to pay for services as required by the admission agreement.
 - (c) The resident fails to comply with written policies or rules of the facility.
 - (d) The resident wishes to transfer.
 - (e) The facility ceases to operate.
- (2) Prior to a facility initiated transfer or discharge of a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.
 - (a) The notice shall be either hand-delivered or sent by certified mail.
 - (b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, unless:
 - (i) notice for a shorter period of time is necessary to protect:
 - (A) the safety of individuals in the facility from endangerment due to the medical or behavioral status of the resident;
 - (B) the health of the individuals in the facility from endangerment due to the resident's continued residency;

- (C) an immediate transfer or discharge is required by the resident's urgent medical needs; or
- (D) the resident has not resided in the facility for at least 30 days.
 - (3) The notice of transfer or discharge shall:
 - (a) be in writing with a copy placed in the resident file;
 - (b) be phrased in a manner and in a language that is most likely to be understood by the resident and the resident's responsible person;
 - (c) detail the reasons for transfer or discharge;
 - (d) state the effective date of transfer or discharge;
 - (e) state the location to which the resident will be transferred or discharged, if known;
 - (f) state that the resident may request a conference to discuss the transfer or discharge; and
 - (g) contain the following information:
 - (i) the name, mailing address, email address and telephone number of the State Long Term Care Ombudsman;
 - (ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
 - (iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
 - (4) The facility shall:
 - (i) update the transfer or discharge notice as soon as practicable before the transfer or discharge if information in the notice changes before the transfer or discharge;
 - (ii) orally explain to the resident, the services available through the ombudsman and the contact information for the ombudsman;
 - (iii) send a copy, in English, of the notice described in Subsection (2) to the State Long Term Care Ombudsman;
 - (A) on the same day on which the facility delivers the notice described in Subsection (2) to the resident and the resident's responsible person; and
 - (B) provide the notice described in Subsection (2) at least 30 days before the day on which the resident is transferred or discharged, unless notice for a shorter period of time is necessary to protect the safety of individuals in the facility from endangerment due to the medical or behavioral status of the resident.
 - (5) The facility shall provide and document the provisions of preparation and orientation, in a language and manner the resident is most likely to understand, for a resident to ensure a safe and orderly transfer or discharge from the facility.
 - (6) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.
 - (a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.
 - (b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.
 - (7) In the event of a facility closure, provide written notification of the closure to the State Long Term Care Ombudsman, each resident of the facility, and each resident's responsible person.
 - (8) The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must accurately reflect the resident's status at the time of assessment.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan shall include a written description of the following:

- (a) what services are provided;
- (b) who will provide the services, including the resident's significant others who may participate in the delivery of services;
- (c) how the services are provided;
- (d) the frequency of services; and
- (e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

- (a) a nursing assessment on each resident;
- (b) general health monitoring on each resident; and
- (c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility

chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

- (a) notifying the resident's responsible person;
 - (b) arranging for transportation to and from the practitioner's office; or
 - (c) arrange for a home visit by a health care professional.
- (3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

- (a) socialization activities;
- (b) independent living activities to foster and maintain independent functioning;
- (c) physical activities; and
- (d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

- (a) coordinate all recreational activities, including volunteer and auxiliary activities;
- (b) plan, organize, and conduct the residents' activity program with resident participation; and
- (c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) Residents may independently administer their own personal injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) The facility must have access to a reference for possible reactions and precautions for all prescribed medications in the facility.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications stored in a central storage area shall be:

(a) locked to prevent unauthorized access; and

(b) available for the resident to have timely access to the medication.

(11) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(12) The facility must develop and implement policies governing the:

(a) security and disposal of controlled substances by the licensee or facility staff which shall be consistent with the provisions of 21 CFR 1307.21; and

(b) destruction and disposal of unused, outdated, or recalled medications.

(13) The facility shall document the return of resident's medication to the resident or to the resident's responsible person upon discharge.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the

licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of \$150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed \$150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

- (a) employee application;
- (b) date of employment;
- (c) termination date;
- (d) reason for leaving;
- (e) documentation of CPR and first aid training;
- (f) health inventory;
- (g) food handlers permits;
- (h) TB skin test documentation; and
- (i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

- (a) the resident's name, date of birth, and last address;
 - (b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;
 - (c) the name, address, and telephone number of the individual to be notified in case of accident or death;
 - (d) the name, address, and telephone number of a physician and dentist to be called in an emergency;
 - (e) the admission agreement;
 - (f) the resident assessment; and
 - (g) the resident service plan.
- (5) Resident records must be retained for at least three years following discharge.

(6) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of residents. The reports shall be kept on file for at least three years.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

- (i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

- (ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

- (iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

- (a) All menus must be approved and signed by a certified dietitian.

- (b) Cycle menus shall cover a minimum of three weeks.

- (c) The current week's menu shall be posted for residents' viewing.

- (d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

- (a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

- (b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

- (a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

- (b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

- (3) The facility shall control odors by maintaining cleanliness.

- (4) There shall be a trash container in every occupied room.

- (5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

- (6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of

equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including a sufficient supply of linens.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use at least one washing machine and one clothes dryer.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with

decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(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) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

- (a) medication administration;
- (b) notification of a responsible party in the case of an emergency;
- (c) service agreement and admission criteria;
- (d) behavior management interventions;
- (e) philosophy of respite services;
- (f) post-service summary;
- (g) training and in-service requirement for employees; and
- (h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

- (a) a service agreement;
- (b) demographic information and resident identification data;
- (c) nursing notes;
- (d) physician treatment orders;
- (e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

- (a.) Demographic information;
- (b.) An emergency contact with name, address and telephone number;

(c.) Consumer health records, including the following:

- (i) record of medication including dosage and administration;
- (ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) Signed consumer agreement and service plan.

(e.) Employment file for each staff person which includes:

- (i) health history;
- (ii) background clearance consent and release form;
- (iii) orientation completion, and
- (iv) in-service requirements.

(5) The program shall have written eligibility, admission and discharge policy to include the following:

- (a) Intake process;
- (b) Notification of responsible party;
- (c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

- (a) Rules of the program;
- (b) Services to be provided and cost of service, including refund policy; and

(c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.

(9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.

(10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct

supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during program operational hours.

(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(13) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.

(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

August 20, 2019

26-21-5

Notice of Continuation February 20, 2019

26-21-1

R512. Human Services, Child and Family Services.**R512-310. Reasonable and Prudent Parent Standard.****R512-310-1. Purpose and Authority.**

(1) The purpose of this rule is to establish standards for normalcy for a child who is in Child and Family Services custody, including a reasonable and prudent parent standard and normalizing activities for children.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-105, 62A-4a-210, 62A-4a-211, and 62A-4a-212.

R512-310-2. Definitions.

As used in this part:

(1) "Activity" is defined in Section 62A-4a-210.

(2) "Age-appropriate" is defined in Section 62A-4a-210.

(3) "Caregiver" is defined in Section 62A-4a-210.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "Out-of-home placement" is defined in Section 62A-4a-210.

(6) "Reasonable and prudent parent standard" is defined in Section 62A-4a-210.

R512-310-3. Highlights.

(1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.

(2) Child and Family Services shall make efforts to normalize the lives of children in the custody of Child and Family Services and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of Child and Family Services.

(3) Child and Family Services shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

(4) Child and Family Services will verify that private agencies providing out-of-home placement under contract with Child and Family Services promote and protect the ability of a child to participate in age-appropriate activities.

(5) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with a reasonable and prudent parent standard.

(6) Child and Family Services will provide training to caregivers and providers regarding how to use and apply the reasonable and prudent parent standard.

R512-310-4. Requirements for Decision Making.

(1) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.

(2) A caregiver shall consider:

(a) The child's age, maturity, and developmental level to maintain the overall health and safety of the child;

(b) Potential risk factors and the appropriateness of the activity;

(c) The best interest of the child based on the caregiver's knowledge of the child;

(d) The importance of encouraging the child's emotional and developmental growth;

(e) The importance of providing the child with the most family-like living experience possible; and

(f) The behavioral history of the child and the child's ability to safely participate in the proposed activity.

(3) Child and Family Team Meetings may be convened at any point to discuss whether the caregiver has used the reasonable and prudent parent standard to determine what activities a child may participate in or if the child feels they are being denied the ability to participate in a normalizing activity.

R512-310-5. Participation in Activities.

(1) Caregivers shall ensure that the child has the safety equipment and any necessary permissions and training necessary to safely engage in each activity the child participates in, including but not limited to the following activities:

(a) Boating;

(b) Rock climbing;

(c) Recreational vehicle use;

(d) Sports;

(e) Camping.

R512-310-6. Group Home or Residential Setting Activities.

(1) When children are placed in a group home or residential treatment setting, the provider will incorporate normalcy activities into the program. The activities will be in-line with the reasonable and prudent parent standard and will help children with skills essential for positive development.

(2) The provider will also have the presence on-site of at least one official who, with respect to any child placed with the provider, will be the designated caregiver who is authorized to apply the reasonable and prudent parenting standard to decisions involving the participation of the child in age or developmentally-appropriate activities.

KEY: child welfare, foster care

January 7, 2016

Notice of Continuation August 12, 2019

62A-4a-102

62A-4a-105

62A-4a-210

62A-4a-211

62A-4a-212

**R523. Human Services, Substance Abuse and Mental Health.
R523-7. Certification of Designated Examiners and Certified Case Managers.**

R523-7-1. Authority.

(1) This rule is promulgated under authority of Section 62A-15-105(2).

R523-7-2. Purpose.

(1) The purpose of this rule is to provide guidance on the process for designated examiners and case managers to attain certification from the Division of Substance Abuse and Mental Health (Division).

R523-7-3. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness, as defined in Subsection 62A-15-602(3).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicant's qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.

(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-7-4. Certified Case Manager Certification.

(1) Definitions.

(a) Targeted Case Management is a service that assists Medicaid recipients in the target group to gain access to needed medical, social, educational, and other services. The overall goal of the service is not only to help Medicaid recipients access needed services, but to ensure that services are coordinated among all agencies and providers involved.

(b) Case Management services include coordinating, advocating, linking and monitoring services to help individuals access needed medical healthcare, behavioral healthcare, basic needs, housing, educational, social, and other services. Case Managers assess individual needs and develop a plan designed to help the individual obtain access to a coordinated array of services.

(c) Certified Case Manager Certification means the process by which a non-licensed individual obtains certification from the Division. Case manager certification allows the Certified Case Manager to provide services for individuals with mental illness, substance use disorders, and/or individuals experiencing homelessness.

(2) Case Management services can be provided by:

(a) A qualified provider, as defined in the Utah Medicaid Provider Manual, found at <https://medicaid.utah.gov/Documents/manuals/pdfs/Medicaid%20Provider%20Manuals/Targeted%20Case%20Management/Serious%20Mental%20Illness/SeriousMentalIllness1-19.pdf> for Targeted Case Management for individuals with Serious Mental Illness; or

(b) An individual under the supervision of a qualified provider employed or contracted by the Utah Department of Human Services, (DHS) a local mental health authority, a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless service program defined as: public or private not-for-profit organizations, faith-based organizations, state departments and agencies, units of local governments and Indian tribal governments who provide services to children, individuals, and/or families who are experiencing homeless or at risk of experiencing homeless contracted by the Department of Workforce Services (DWS).

(3) Supervisors of case managers billing Medicaid for case management services must be qualified providers as defined in (2)(a).

(4) Supervisors of case managers not providing Medicaid billable services must have one of the following:

(a) A Bachelor's Degree in human services or a related field and two years of experience in human services;

(b) An Associate's Degree in human services or a related field and three years of experience in human services; or

(c) Five years of experience in human services.

(5) Certified Case Manager duties include activities that assist individuals with:

(a) Serious mental illness;

(b) Serious emotional disturbance;

(c) Substance use disorders; and

(d) Services related to homelessness;

(e) Accessing medical and related therapeutic services; and

(f) Promoting the individual's general health and their ability to function independently and successfully in the community.

(6) A Certified Case Manager must meet the following minimum standards:

(a) Be at least 18 years of age;

(b) Have at least a high school degree or a General Education Diploma(GED); and

(c) Be employed or subcontracted by DHS, a local mental health authority or a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless program as defined in R523-7-4(2)(b); and

(d) Meet one of the following:

(i) Prior to applying for the Case Management Certification, obtain 400 hours experience within the previous 10 years of application submission in human services or related fields, which

may include relevant education/volunteer activities; or

(ii) Be a Certified Peer Support Specialist or Family Resource Facilitator and have been actively working in the humans services field for at least 400 hours within the previous 10 years of the application submission date; or

(iii) Have at least a bachelor's degree in Human Services or a related field of study;

(e) Pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(f) Have completed a Division approved 40-hour supervised case management practicum.

(7) The Division Director or designee shall determine if experience and qualifications are satisfactory to exceed the required standards, and if there are any training requirements that may be waived due to prior experience and training to grant an exemption of any of the above requirements. In order to qualify for an exemption, the applicant must provide documentation of qualifications exceeding those required by this certification.

(8) Applications and instructions to apply for certification to become a Certified Case Manager can be obtained from the Division. Only complete applications supported by all necessary documents shall be considered.

(a) Applicants or the agency submitting the application shall respond to any Division requests for additional information regarding the application within 30 days or the Certified Case Managers certification may be denied.

(b) Individuals shall be notified in writing of disposition and determination to grant or deny the application within 30 days of submission including response to Division requests for additional information of the Certified Case Manager's application. The Division shall issue a certificate verifying the certification is valid for three years, and the certificate shall be transferable across qualified employers.

(c) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.

(9) Each Certified Case Manager is required to complete and document 30 training hours related to mental health, substance use disorder homelessness, trauma informed care or related topics over the 3 year certification period. Training hours must include at least 4 hours of ethics and 3 hours of suicide prevention training.

(a) A Certified Case Manager shall retain training documentation. Documentation should not be sent to the Division unless requested for an audit.

(b) Documents to verify training include:

(i) A certificate of completion documenting continuing education validation furnished by the presenter;

(ii) A letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) An official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(10) Certified Case Managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the DHS Provider Code of Conduct Policy.

(a) Each employer that becomes aware of a Certified Case Manager engaging in unprofessional or unlawful conduct, or has violated the provider code of conduct shall:

(i) immediately take action to review the allegations,

(ii) take steps to ensure that all individuals involved with the allegation are protected, and

(iii) notify the Division within 30 days.

(b) Termination of certification shall be made effective immediately if the alleged violation(s) results in one or more of the following:

(i) personal financial gain through deception, or a business transaction with a client, by the Certified Case Manager,

(ii) physical or emotional harm to a person that is caused by the Certified Case Manager, or

(iii) a financial loss to a client, the State, or another employee that is caused by the Certified Case Manager.

(c) The Division shall take the following actions when it becomes aware of a Certified Case Manager in violation of the provider code of conduct that does not result in immediate termination:

(i) Within 30 days of becoming aware of the violation(s), the Division shall notify the Certified Case Manager, in writing, through a Notice of Agency Action specifying the area(s) of noncompliance.

(ii) Within 30 days of receiving a notice of Agency Action, the Certified Case Manager shall submit an acceptable written plan to the Division explaining how they will achieve compliance.

(iii) All plans shall demonstrate how the Certified Case Manager shall be in compliance within 30 days after receiving the Notice of Agency Action.

(iv) If an acceptable plan of action is not received by the Division within 30 days of sending the Notice of Agency Action, the Certified Case Manager shall be notified that their certification has been suspended until an acceptable plan is submitted to the Division.

(v) A Certified Case Manager must cease providing any and all case management services until a suspension is lifted.

(d) The Division shall revoke the certification of any Certified Case Manager for the following reasons:

(i) The Certified Case Manager fails to provide the Division with written evidence of compliance to a plan of action within 30 days after receiving a Notice of Agency Action that their certification has been suspended.

(ii) The Certified Case Manager continues to provide case management services during the period of a suspension; or

(iii) The Certified Case Manager receives more than two notices of noncompliance with the Provider Code of Conduct in a one-year period.

(e) Any Certified Case Manager whose certification has been revoked may request an informal hearing with the Division Director or designee, in writing, within 10 business days of receiving notice of revocation.

(f) The Division Director or designee shall review the request and determine to uphold, amend or reverse the action within 10 business days, and the Division shall inform the Certified Case Manager of the decision in writing.

(g) Any Certified Case Manager with a revoked certification may not reapply for recertification for a period of 12 months.

(11) If a Certified Case Manager fails to complete the requirements for training hours, their certificate will be revoked or allowed to expire, and will not be renewed unless the required training hours have been completed and submitted to the Division for approval within 30 days of expiration.

(a) If any Certified Case Manager's certification is not renewed within the required time frame, they may not reapply for certification within 60 days of the expiration date.

(12) If an individual fails the Division examination twice within a 30 day period of time, they must wait 30 days before taking the examination again.

(13) The Division Director or designee shall determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(14) The Certified Case Manager's certification shall be posted and available upon request.

KEY: designated examiners, involuntary commitment, case managers, case manager certification
August 21, 2019

62A-15-105(2)
62A-15-602(5)

R527. Human Services, Recovery Services.**R527-40. Retained Support.****R527-40-1. 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. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

(2) The purpose of this rule is to define "retained support" in regards to a child support case, and to provide details as to how the amount owed is calculated once a retained support case has been opened for an obligee who has retained payments that were assigned to the state.

R527-40-2. Retained Support.

(1) The term Retained Support refers to a situation in which an obligee who has assigned support rights to the state has received child support but failed to forward the payment(s) to ORS.

(2) The agent will refer the case to the appropriate child support team with the evidence to support the referral.

(3) In computing the amount owed, the obligee will be given credit for the \$50 pass-through payment for any months prior to March, 1997, in which support was retained by the client. For example, if the obligee received and kept a support payment of \$200 in February, 1997, the referral will be made as a \$150 debt. For support payments retained on or after March 1, 1997, no credit shall be given because there will be no pass-through payments for support payments made after February 28, 1997.

R527-40-3. Recoupment of Public Assistance Overpayments/Retained Support.

(1) Obligor not receiving assistance.

(a) The obligor will be asked to complete an income asset affidavit.

(b) The total liability shall be reviewed with the obligor.

(c) The obligor will be requested to pay the total obligation in full.

(d) If total payment is not possible, the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.

(2) Obligor receiving assistance.

(a) Payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent in accordance with rule or federal regulation.

KEY: child support, public assistance overpayments

March 9, 2016

62A-1-111

Notice of Continuation August 28, 2019

62A-11-107

62A-11-304.1

62A-11-307.1(3)

62A-11-307.2(3)

R590. Insurance, Administration.**R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers.****R590-67-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code.

R590-67-2. Application of Rule.

This rule is applicable to all domestic stock insurers having 100 or more stockholders: provided, however, that this rule may not apply to any insurer if 95% or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by fewer than 500 stockholders. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and Rule X-14 of the Securities and Exchange Commission shall be exempt from the provisions of this rule.

R590-67-3. Proxies, Consents and Authorizations.

No domestic stock insurer, or any director, office or employee of the insurer subject to Section 2, or any other person, may solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent or authorization of any stock of the insurer in contravention of this rule. The following documents are available from the Insurance Department:

A. "Proxy Form A", entitled "Information Required in Proxy Statement,"

B. "Proxy Form B", entitled "Information To Be Included in Statement Filed by or on Behalf of a Participant, Other Than the Insurer, In a Proxy Solicitation in an Election Contest."

R590-67-4. Disclosure of Equivalent Information.

Unless proxies, consents or authorizations of a stock of a domestic insurer subject to Section 3 of this rule are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this rule and its schedules prior to any annual or other meeting, the insurer shall, in accordance with this rule or other rule, or both, as the commissioner may adopt, file with the commissioner and transmit to all stockholders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

R590-67-5. Definitions.

A. The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.

B. The terms "solicit" and "solicitation" for purposes of this rule shall include:

1. any request for a proxy, whether or not accompanied by or included in a form of proxy; or

2. any request to execute or not to execute, or to revoke, a proxy; or

3. the furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

C. The terms "solicit" and "solicitation" may not include:

1. any solicitation by a person of a stock of which he is the beneficial owner;

2. action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of the stock soliciting material received from the company, or impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; and

3. the furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

R590-67-6. Information to be Furnished to Stockholders.

A. No solicitation subject to this rule may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Proxy Form.

B. If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A of this section shall be accompanied or preceded by an annual report, in preliminary or final form, to the stockholders containing the financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the foregoing requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

C. Two copies of each report sent to the stockholders pursuant to this section shall be mailed to the commissioner not later than the date on which the report is first sent or given to stockholder or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to Subsection A of Section 8, whichever date is later.

R590-67-7. Requirements as to Proxy.

A. The form of proxy:

1. shall indicate in boldface type whether or not the proxy is solicited on behalf of the management;

2. shall provide a specifically designated blank space for dating the proxy; and

3. shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management, or stockholders.

No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C of this section.

B. Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office. A proxy may confer discretionary authority with respect to matters where a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.

C. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.

D. No proxy may confer authority:

1. to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or

2. to vote at any annual meeting other than the next annual meeting, or any adjournment of the annual meeting, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B of this section, a choice with respect to any matter to be acted upon, the vote will be in accordance with the specifications so made.

F. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter with appropriate headings. All

printed proxy statements shall be clearly and legibly presented.

R590-67-8. Material Required to be Filed.

A. Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently shall be filed with the commissioner at least ten days prior to the date definitive copies of the material are first sent or given to stockholders, or the shorter period prior to that date as the commissioner may authorize upon a showing of good cause.

B. Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days, exclusive of Saturdays, Sundays or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to the date the commissioner may authorize upon a showing of good cause.

C. Two definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.

D. Where any proxy statement, form of proxy or other material filed pursuant to these rules is amended or revised, two of the copies shall be marked to clearly show the changes.

E. Copies of replies to inquiries from stockholders requesting further information and copies of communications, which do no more than request that forms of proxy solicited be signed and returned, need not be filed pursuant to this section.

F. Notwithstanding the provisions of Subsections A and B of this section and of Subsection E of Section 11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication. Definitive copies shall be filed with or mailed for filing to the commissioner as required by Subsection C of this section, not later than the date the material issued or published. The provisions of Subsections A and B of this section and Subsection E of Section 11 shall apply to any reprints or reproductions of all or any part of the material.

R590-67-9. False or Misleading Statements.

No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements in the solicitation not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

R590-67-10. Prohibition of Certain Solicitations.

No person making a solicitation which is subject to this rule may solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

R590-67-11. Special Provisions Applicable to Election Contests.

A. Applicability. This section shall apply to any solicitation to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

B. Participant or Participant in a Solicitation.

1. For purposes of this section the term "participant" and "participant in a solicitation" include:

- (a) the insurer;
- (b) any director of the insurer, and any nominee for whose

election as a director proxies are solicited; and

(c) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.

2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:

(a) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;

(b) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(c) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of employment;

(d) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates whose is not otherwise a participant; or

(e) any officer or director of, or any person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.

C. Filing of Information Required by Proxy Form.

1. No solicitation subject to this section may be made by any person other than the management of an insurer unless at least five business days prior to, or a shorter period as the commissioner may authorize upon showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Proxy Form and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.

2. Within five business days after a solicitation subject to this section is made by the management of an insurer, or longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Proxy Form.

3. If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition to it, a statement in duplicate containing the information specified in Proxy Form shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.

4. If, subsequent to the filing of the statements required by Subsections A, B, and C of this section, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified by Proxy Form, within three business days after the person becomes a participant, or the longer period as the Department may authorize upon a showing of good cause.

5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the commissioner.

D. Solicitations Prior to Furnishing Required Written Proxy Statement.

Notwithstanding the provisions of Subsection A of Section 6, a solicitation subject to this section may be made prior to furnishing stockholders a written proxy statement containing the information

specified in Proxy Form with respect to the solicitation, provided that:

1. the statements required by Subsection C of this section are filed by or on behalf of each participant in the solicitation;
2. no form of proxy is furnished to stockholders prior to the time the written proxy statement required by Subsection A of Section 6 is furnished to the persons provided that Subsection B of this section may not apply where a proxy statement then meeting the requirements of Proxy Form has been furnished to stockholders;
3. the information specified in Subsection 2 and 3 of C of this section, of the statements required by Subsection C of this section to be filed by each participant, or an appropriate summary of it, are included in each communication sent or given to stockholders in connection with the solicitation; and
4. a written proxy statement containing the information specified in Proxy Form with respect to a solicitation is sent or given to stockholders at the earliest practicable date.

E. Solicitations Prior to Furnishing Required Written Proxy Statement - Filing Requirements.

Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by Subsection A of Section 6 shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the persons, or shorter period as the commissioner may authorize upon a showing of good cause.

F. Application of This Section to Report.

Notwithstanding the provisions of Subsections B and C of Section 6, two copies of any portion of the report referred to in subsection two of section five which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to stockholders.

R590-67-12. Separability.

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.

**KEY: insurance law
1989**

31A-2-201

Notice of Continuation August 20, 2019

R590. Insurance, Administration.**R590-76. Health Maintenance Organizations and Limited Health Plans.****R590-76-1. Authority.**

This rule is issued pursuant to the authority set forth in Title 31A, Chapter 8, Health Maintenance Organizations (HMOs) and Limited Health Plans.

R590-76-2. Purpose.

The purpose of this rule is to implement Chapter 8 of Title 31A to assure the availability, accessibility and quality of services provided by HMOs and to provide reasonable standards for terms and provisions contained in HMO group and individual contracts and evidences of coverage.

R590-76-3. Applicability and Scope.

This rule applies to all organizations defined in 31A-8-101(8). In the event of conflict between the provisions of this regulation and the provisions of any other regulation issued by the commissioner, the provisions of this regulation shall be controlling. This rule also applies to all HMO contracts covering individuals and groups issued or renewed and effective on or after January 1, 2003.

R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

(2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

(4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

(5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

(6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

(7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings which operate within their specific licensure requirements.

(9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on

behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

(10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

(11) "Group contract holder" means the person to which a group contract has been issued.

(12) "Incidental coverage" means a contract or endorsement offered by an HMO that provides limited health plan benefits as defined in Subsection 31A-8-101(6)(a).

(13) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

(14) "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(15) "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

(16) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

(17) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

(18) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(19) "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility.

(20) "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.

R590-76-5. Requirements for HMO Contracts and Evidence of Coverage.

(1)(a) Individual contracts. Each subscriber shall be entitled to receive an individual contract and evidence of coverage in a form that has been filed with the commissioner.

(b) Group contracts. Each group contract holder shall be

entitled to receive a group contract that has been filed with the commissioner.

(c) Group contracts, individual contracts and evidences of coverage shall be delivered or issued for delivery to subscribers or group contract holders within a reasonable time after enrollment, but not more than 30 days from the later of the effective date of coverage or the date on which the HMO is notified of enrollment.

(2) HMO information. The group or individual contract and evidence of coverage shall contain the name, address and telephone number of the HMO, and where and in what manner information is available as to how services may be obtained. A telephone number within the service area for calls, without charge to members, to the HMO's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for enrollee services, problems or questions. The group or individual contract and evidence of coverage may indicate the manner in which the number will be disseminated rather than list the number itself.

(3) Eligibility requirements. The group or individual contract and evidence of coverage shall contain eligibility requirements indicating the conditions that shall be met to enroll. The forms shall include a clear statement regarding coverage of dependents and newborn children.

(4) Benefits and services within the service area. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available within the service area.

(5) Emergency care benefits and services. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available for emergencies 24 hours a day, 7 days a week, including disclosure of any restrictions on emergency care services. No group or individual contract and evidence of coverage shall limit the coverage of emergency services within the service area to affiliated providers only.

(6) Out-of-area benefits and services. Other than emergency care, if benefits and services are covered outside the service area, a group or individual contract and evidence of coverage shall contain a specific description of that coverage.

(7) Copayments, coinsurance, and deductibles. The group or individual contract and evidence of coverage shall contain a description of any copayments, coinsurance, or deductibles that must be paid by enrollees.

(8) Limitations and exclusions. The group or individual contract and evidence of coverage shall contain a description of any limitations or exclusions on the services or benefits, including any limitations or exclusions due to preexisting conditions or waiting periods.

(9) Claims procedures. The group or individual contract and evidence of coverage shall contain procedures for filing claims that include:

- (a) any required notice to the HMO;
- (b) any required claim forms, including how, when and where to obtain them;
- (c) any requirements for filing proper proofs of loss;
- (d) any time limit of payment of claims;
- (e) notice of any provisions for resolving disputed claims, including arbitration; and
- (f) a statement of restrictions, if any, on assignment of sums payable to the enrollee by the HMO.

(10) Enrollee grievance procedures and arbitration. In compliance with R590-76-8(4), the group or individual contract and evidence of coverage shall contain a description of the HMO's method for resolving enrollee grievances, including procedures to be followed by the enrollee in the event any dispute arises under the contract, including any provisions for arbitration.

(11) Extension and conversion of coverage. A group contract, and evidence of coverage shall contain a conversion provision which provides each enrollee the right to a conversion policy and/or extend coverage to a contract as set forth in Chapter 22 of Title 31A, Part VII.

(12) Coordination of benefits. The group or individual contract

and evidence of coverage may contain a provision for coordination of benefits that shall be consistent with that applicable to other carriers in the jurisdiction. Any provisions or rules for coordination of benefits established by an HMO shall not relieve an HMO of its duty to provide or arrange for a covered health care service to an enrollee because the enrollee is entitled to coverage under any other contract, policy or plan, including coverage provided under government programs.

(13) Description of the service area. The group or individual contract and evidence of coverage shall contain a description of the service area.

(14) Entire contract provision. The group or individual contract shall contain a statement that the contract, all applications and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, bylaws or other document of the HMO shall be part of the contract unless set forth in full in the contract or attached to it. However, the evidence of coverage may be attached to and made a part of the group contract.

(15) Term of coverage. The group or individual contract and evidence of coverage shall contain the time and date of occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date of occurrence upon which coverage takes effect is determined. The contract and evidence of coverage shall also contain the time and date of occurrence upon which coverage will terminate.

(16) Cancellation or termination. The group or individual contract and evidence of coverage shall contain the conditions upon which cancellation or termination may be effected by the HMO, the group contract holder or the subscriber.

(17) Renewal. The group or individual contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to renewal.

(18) Reinstatement of group or individual contract holder. If an HMO permits reinstatement of a group or individual, the contract and evidence of coverage shall include any terms and conditions concerning reinstatement. The contract and evidence of coverage may state that all reinstatements are at the option of the HMO and that the HMO is not obligated to reinstate any terminated contract.

(19) Conformity with State Law. A group or individual contract and evidence of coverage delivered or issued for delivery in this state shall include a provision that states that any provision not in conformity with Chapter 8 of Title 31A, this regulation or any other applicable law or regulation in this state shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the applicable laws and regulations of this state.

(20) Definitions. All definitions used in the group or individual contract and evidence of coverage shall be in alphabetical order.

R590-76-6. Unfair Discrimination.

An HMO shall not unfairly discriminate against an enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. An HMO shall not expel or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of an individual's or enrollee's health status or health care needs, except for a policy which contains a lifetime policy maximum and such maximum has been reached. However, nothing shall prohibit an HMO from setting rates, establishing a schedule of charges in accordance with actuarially sound and appropriate data, or appropriately applying policy provisions in compliance with the Utah Insurance Code.

R590-76-7. HMO Services.

- (1) Access to Care.
 - (a) An HMO shall establish and maintain adequate arrangements to provide health services for its enrollees, including:
 - (i) reasonable proximity to the business or personal residences

of the enrollees so as not to result in unreasonable barriers to accessibility;

- (ii) reasonable hours of operation and after-hours services;
- (iii) emergency care services available and accessible within the service area 24 hours a day, 7 days a week; and
- (iv) sufficient providers, personnel, administrators and support staff to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) If a primary care physician is required in order to obtain covered services, an HMO shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting or referral.

(c) An HMO shall have written procedures governing the availability of services utilized by enrollees, including at least the following:

- (i) well-patient examinations and immunizations;
- (ii) treatment of emergencies;
- (iii) treatment of minor illness; and
- (iv) treatment of chronic illnesses.

(2) Basic health care services. An HMO shall provide, or arrange for the provision of, as a minimum, basic health care services, which shall include the following:

- (a) emergency care services;
- (b) inpatient hospital services, meaning medically necessary hospital services including:
 - (i) room and board;
 - (ii) general nursing care;
 - (iii) special diets when medically necessary;
 - (iv) use of operating room and related facilities;
 - (v) use of intensive care units and services;
 - (vi) x-ray, laboratory and other diagnostic tests;
 - (vii) drugs, medications, biologicals;
 - (viii) anesthesia and oxygen services;
 - (ix) special nursing when medically necessary;
 - (x) physical therapy, radiation therapy and inhalation therapy;
 - (xi) administration of whole blood and blood plasma; and
 - (xii) short-term rehabilitation services;
- (c) inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other providers including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services;
- (d) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility or at a hospital. Outpatient medical services shall include:
 - (i) diagnostic services;
 - (ii) treatment services;
 - (iii) laboratory services;
 - (iv) x-ray services;
 - (v) referral services;
 - (vi) physical therapy, radiation therapy and inhalation therapy;

and

(vii) preventive health services, which shall include at least a range of services for the diagnosis of infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice;

(e) Coverage of inborn metabolic errors as required by 31A-22-623 and Rule R590-194, Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism, and benefits for diabetes as required by 31A-22-626 and Rule R590-200, Diabetes Treatment and Management.

(3) Out-of-area benefits and services. Other than emergency care, if the contract provides out-of-area services, they shall be subject to the same copayment, coinsurance, and deductible requirements set forth in R590-76-5(7).

(4)(a) An HMO may offer a contract or endorsement that

provides incidental coverage.

(b) An incidental coverage contract or endorsement is exempt from the basic health care services and emergency care requirements set forth in this rule.

(c) An HMO offering an incidental benefit contract or endorsement may offer all of the basic health care services.

R590-76-8. Other HMO Requirements.

(1) Provider lists.

(a) An HMO shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon reenrollment.

(b) Upon notification to an HMO that a provider is no longer affiliated, the HMO shall within 30 days:

- (i) notify enrollees who are receiving ongoing care; and
- (ii) update any applicable web site provider lists.

(c) Subject to the approval of the commissioner, an HMO may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.

(d) Provider lists shall contain a notice regarding the availability of the listed primary care physicians. The notice shall be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice shall contain the following or similar language:

"Enrolling in (name of HMO) does not guarantee services by a particular provider on this list. If you wish to receive care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for (name of HMO)."

(2) Description of the services area. An HMO shall provide its subscribers with a description of its service area 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. If the description of the service area is changed, the HMO shall provide at such time a new description of the service area to its affected subscribers within 30 days.

(3) Copayments, coinsurance, and deductibles. An HMO may require copayments, coinsurance, or deductibles of enrollees as a condition for the receipt of health care services. Copayments, coinsurance, and deductibles shall be the only allowable charge, other than premiums, insurers may assess to subscribers, unless otherwise allowed by law.

(4) Grievance procedure. A grievance procedure in compliance with 31A-22-629 and Rule R590-203, Health Care Benefit Plans-Grievance and Voluntary Independent Review Procedures Rule, to resolve an adverse benefit determination, shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.

(5) Provider contracts. All provider contracts must be on file and available for review by the commissioner and the director of the UDOH.

R590-76-9. Quality Assurance.

(1) Quality assurance plan.

(a) Each HMO shall develop a quality assurance plan. The plan shall be designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

(b) Certification of quality assurance plan.

(i) A new HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation.

(ii) An existing HMO shall arrange a pay for a review and certification of its quality assurance plan every three years unless required sooner by the certifying entity.

(iii) Reviews shall be conducted by the National Committee

of Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Accreditation HealthCare Commission (URAC), formerly known as the Utilization Review Accreditation Commission, Health Insight, or other entities as approved by the commissioner. Reviews conducted for the federal government shall satisfy these requirements if the requirements of this subsection are met.

(iv) Each HMO shall arrange for the directors to receive a copy of the review findings, recommendations, and certification, or notice of non-approval, of the quality assurance plan. This material shall be sent directly from the certifying entity to the directors. Certification status and review materials will be maintained as a protected record by the directors.

(v) Each HMO shall implement clinical and procedural requirements made by the certifying entity after the findings are received by the HMO.

(c) Each year on or before July 1, an HMO shall file to the directors a written report of the effectiveness of its internal quality control. The report must include a copy of the HMO's quality assurance plan.

(2) Quality assurance audits. The commissioner may audit an HMO's quality control system. Such audit shall be performed by qualified persons designated by the commissioner.

(a) The HMO shall comply with reasonable requests for information required for the audit and necessary to:

(i) measure health care outcomes according to established medical standards;

(ii) evaluate the process of providing or arranging for the provision of patient care;

(iii) evaluate the system the HMO uses to conduct concurrent reviews and preauthorized medical care;

(iv) evaluate the system the HMO uses to conduct retrospective reviews of medical care; and

(v) evaluate the accessibility and availability of medical care provided or arranged for by the HMO.

(b) Information furnished shall only be used in accordance with 31A-8-404.

(3) Internal peer review. The HMO shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

R590-76-10. Reporting Requirements and Fee Payments.

Section 31A-3-103 and 31A-4-113 apply to organizations. Both types of entities shall submit their annual reports on the National Association of Insurance Commissioner's (NAIC) blanks that have been adopted for HMOs. In addition, all HMOs shall submit the information asked for in the annual statistical report required by the UDOH. The annual statement blank will be filed with the Insurance Department and the UDOH by March 1 each year.

R590-76-11. Financial Condition.

(1) Qualified assets. In determining the financial condition of any organization, only the following assets may be used:

(a) assets as determined to be admitted in the Accounting Practices and Procedures Manual published by the NAIC; and

(b) other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the provision of health care, at values determined by him/her.

(2) Investments. Investments of organizations shall be consistent with Title 31A, Chapter 18.

(3) Liability insurance. Evidence of adequate general liability and professional liability insurance, or a plan for self-insurance approved by the commissioner, must be maintained by the organization. Organizations may only contract with providers of health services that have liability insurance.

R590-76-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-76-13. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: HMO insurance

November 24, 2009

Notice of Continuation August 20, 2019

31A-2-201

R590. Insurance, Administration.**R590-79. Life Insurance Disclosure Rule.****R590-79-1. Authority.**

This rule is adopted and promulgated pursuant to Section 31A-2-201(3) wherein the commissioner may make rules to implement the provisions of Title 31A, and Section 31A-22-425(1) wherein the commissioner may make rules to establish standards for buyer's guides and disclosures.

R590-79-2. Purpose.

The purpose of this rule is to require insurers to deliver to purchasers of life insurance, information which will improve the purchaser's ability to select a plan of life insurance most appropriate for the purchaser's needs and improve the purchaser's understanding of the basic features of the policy being purchased or under consideration for purchase.

This rule does not prohibit the use of additional material which is not in violation of this rule or any other statute or rule.

R590-79-3. Scope.

Except as hereinafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

- A. annuities;
- B. credit life insurance;
- C. group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);
- D. life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended; or
- E. variable life insurance under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account.

R590-79-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

- A. A Buyer's Guide means a document which contains, and is limited to, the language contained in the "Life Insurance Buyer's Guide," as adopted and amended by, and available from the National Association of Insurance Commissioners, 2000 edition, which is incorporated in this rule by reference.
- B. Current Scale of Nonguaranteed Elements means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.
- C. Generic name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
- D. Nonguaranteed Elements means the premiums, credited interest rates including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- E. Policy Data means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values; and endowment benefits.

F.(1) Policy summary means a written statement describing only the guaranteed elements of the policy. A policy summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(b) The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The generic name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, whichever is earlier.

(i) The annual premium for the basic policy.

(ii) The annual premium for each optional rider.

(iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) The date on which the policy summary is prepared.

(2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

(3) If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary is not required.

G. Preneed Funeral Contract or Prearrangement means an agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

R590-79-5. Disclosure Requirements.

A. The insurer shall provide a Buyer's Guide and either a policy summary or a life illustration that is in compliance with Rule R590-177, Life Insurance Illustrations Rule, when the policy is delivered or prior to delivery of the policy if so requested.

B. The insurer shall provide a Buyer's Guide to any prospective purchaser upon request.

C. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance" and similarly structured policies, the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

D. Requirements applicable to existing policies.

Upon request by the policyholder, the insurer shall furnish either policy data or an in force illustration as follows:

(1) For policies issued prior to January 1, 1997, the effective date of R590-177, Life Insurance Illustrations Rule, the insurer shall furnish policy data, or at its option, an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(2) For policies issued on or after January 1, 1997 that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(3) If the policy was issued on or after January 1, 1997, and declared to be used with an illustration, an in force illustration shall be provided.

(4) Unless otherwise requested, the policy data shall be provided for 20 consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. The insurer may charge a reasonable fee for the preparation of the statement after providing one annually without charge.

E. Preneed Funeral Contracts or Prearrangements. The following information shall be adequately disclosed at the time an application is made prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement which is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement:

(a) of any changes in the life insurance policy including but not limited to changes in the assignment, beneficiary designation or use of the proceeds;

(b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments; and

(c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(8) The fact that a sales commission or other form of compensation is being paid and if so, the identity of such individuals or entities to whom it is paid.

R590-79-6. General Requirements.

A. Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this rule. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

B. A producer shall inform the prospective purchaser, prior to

commencing a life insurance sales presentation, that he or she is acting as a life insurance producer and inform the prospective purchaser of the full name of the insurance company which the producer is representing to the buyer. In sales situations in which a producer is not involved, the insurer shall identify its full name. A presentation commences with an initial contact with a prospective purchaser in person, by telephone, by electronic communication, or by way of printed materials, particularly where rates or values are quoted or when policy or contract representations are made.

C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.

D. Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements (use appropriate special term such as "current dividend" or "current rate" scale.) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued on or after January 1, 1997, that includes nonguaranteed elements over a period of years shall be governed by R590-177, Life Insurance Illustrations Rule.

E. For a life insurance policy or certificate with a death benefit not exceeding \$15,000, the insurer shall provide disclosure of the following:

(1) limited death benefits whenever a policy limits death benefits during a period following the inception date of coverage;

(2) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists.

The disclosure shall be provided to the applicant no later than delivery of the policy or certificate.

F. The policy summary, the life illustration that is subject to the requirements of R590-177, Life Insurance Illustrations Rule, and all other sales materials must be complete, consistent, and not misleading. If asterisks are used to reference footnotes, the asterisks must be clear and easily seen.

G. For the purposes of this rule, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

H. If the policy will lapse under the guaranteed assumptions unless a premium higher than the planned premium is paid, that fact must be disclosed and the date, policy duration, or attained age of lapse must be disclosed in the policy summary and any periodic report.

R590-79-7. Failure to Comply.

Failure of an insurer to provide or deliver a Buyer's Guide and either a policy summary or life illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, as provided in this rule shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

R590-79-8. Severability.

If any provision of this rule or application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

R590-79-9. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-79-10. Enforcement Date.

The commissioner will begin enforcing this revised rule 45 days after its effective date.

KEY: insurance law
November 24, 2009
Notice of Continuation August 20, 2019

31A-2-201

R590. Insurance, Administration.**R590-83. Unfair Discrimination on the Basis of Sex or Marital Status.****R590-83-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the Commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-83-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-83-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-83-4. Availability Requirements and Prohibited Transactions.

Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition or type of coverage may not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured, except marital status may be considered for the purpose of defining eligibility for dependent or family coverage. An insurer may treat a polygamous relationship differently than a monogamous relationship for purposes of defining or providing dependent or family coverage provided that the treatment reflects reasonable treatment of the interests of the affected parties and safeguards the economic interests of the insurer and other policyholders or prospective policyholders. Any insurer or representative of an insurer acting in contravention of this rule shall be deemed to have engaged in an unfair or deceptive act or practice as provided by Chapter 23a, Title 31A. Examples of the practices prohibited by this section include:

- (a) denying, canceling or refusing to renew coverage, or providing coverage on different terms, because the insured or prospective insured is residing with another person not related by blood or marriage;
- (b) offering coverage to males gainfully employed at home, employed part-time or employed by relatives while denying or offering reduced coverage to females similarly employed;
- (c) reducing disability benefits for females who become disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to males;
- (d) denying females waiver of premium provisions that are available to males or offering the provisions to females only for contact limits that are lower than those available to males;
- (e) refusing to offer maternity benefits to insureds or prospective insureds purchasing individual contracts when comparable family coverage contracts offer maternity benefits;
- (f) denying, under group contracts, dependents coverage to husbands of female employees when dependent's coverage is available to wives of male employees;
- (g) offering coverage to males in certain occupations while denying coverage or offering more limited coverage to females in the same occupational categories;
- (h) offering males higher benefit levels or longer benefits periods, or both, than are offered to females in the same classifications;
- (i) offering contracts containing different definitions of disability for females and males in the same classifications;
- (j) offering contracts containing different waiting and elimination periods for females and males;
- (k) requiring female applicants to submit to medical examinations while not requiring males to submit to the

examinations for the same coverage;

- (l) establishing different benefit options for females and males;
- (m) denying to divorced or single persons coverage available to married persons;
- (n) limiting the amount of coverage available to an insured or prospective insured based upon the person's marital status;
- (o) denying employees of one sex insurance benefits that are offered to dependents who are of the same sex as the employees;
- (p) denying a married or separated female the right to obtain or continue coverage in her own name when the same does not apply to males;
- (q) establishing different issue age requirements for females and males;
- (r) establishing different occupational classifications for females and males;
- (s) denying coverage to unwed persons or their dependents, or both.

R590-83-5. Class Rating Differentials.

The establishment of reasonable and consistently applied class rating differentials does not constitute a practice prohibited by Section 4. This rule may not be deemed to prohibit charging different premium rates on the basis of sex.

R590-83-6. Severability.

If any provision of this rule is held invalid, it may not affect the provisions of this rule that can be given effect, and to that extent, the provisions of this rule are declared to be severable.

KEY: insurance law**1989****Notice of Continuation August 20, 2019****31A-23a-402****31A-2-201**

R590. Insurance, Administration.
R590-127. Rate Filing Exemptions.
R590-127-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Section 31A-2-201(3), to adopt rules for the implementation of the Utah Insurance Code, and pursuant to Section 31A-19a-103, which specifically authorizes the commissioner to exempt any market segment from any or all of the provisions of Chapter 19a of Title 31A.

R590-127-2. Purpose.

Section 31A-19a-203 requires that all insurers and rate service organizations to which Chapter 19a applies file all rates and supplementary rate information, which includes any manual or plan of rates, classification, rating schedule, rating rule, and rate-related underwriting rule, with the Insurance Commissioner within 30 days of the designated effective date. No exception is made in the statute for "(a) rates" or "refer to company" rates or rating plans for specialized or individual risks. All insurers using any of these types of rates or plans would be doing so in violation of the statute.

The purpose of this rule is to define these rates and plans, to make certain exemptions with regards to the filing requirements of Section 31A-19a-203, and to establish certain procedures for that market segment which uses these types of rates or plans.

R590-127-3. Scope.

This rule applies to all insurers licensed to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance and workers' compensation insurance, as defined in Section 31A-1-103.

R590-127-4. Definitions.

This rule is concerned with terminology which is commonly used in the insurance industry but for which no decisive definitions have been established. To promote understanding, some explanation is required.

Manual classifications, prospective loss costs and rates are developed by pooling vast amounts of statistical data. They are, by nature, average. For many types of risks there does not exist enough statistical data to develop credible prospective loss costs, manual rates and classifications. Over time the industry has developed ways of dealing with these unconventional risks. The procedure for rating an exposure that does not have a published prospective loss cost or manual rate is termed "(a) rating". The term is derived from the fact that the manual contains the symbol "(a)" or the words "refer to company" opposite the applicable code number instead of a specific dollar and cent rate. There are generally three types of situations which require (a) rates: (1) For a class in which the risks are so different from each other that no single manual rate could be representative of all of them; (2) where a class does not develop enough experience to warrant any credibility for ratemaking purposes; or (3) risks that involve a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes.

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-103, and in addition, the following:

(1) "(a) rate" means a rating rule or a rate expressed as the symbol "(a)" or the words "refer to company" listed opposite a classification code on the manual rule and rate pages of the Commercial Lines Manual.

(2) "(a) rating," special risk rating, means the procedure an underwriter uses for classifying and rating any risk which presents unique or unusual conditions, exposures or hazards for which he feels a commercial lines manual classification or rate is not appropriate.

(3) "Commercial Lines Manual" means the manual of rates, classifications and underwriting rules for commercial lines insurance, including the plan known as the Highly Protected Risk

Plan, filed with the commissioner by the Insurance Services Office, Inc. For the purpose of this rule, this term shall include any similar rating plan or manual, including Highly Protected Risk Plans or large risk property rating plans, filed with the commissioner by other rate service organizations or individual insurers.

(4) "Excess Insurance" means a coverage designed to be in excess over one or more primary coverages or a Self-Insured Retention and which does not pay a loss until the loss amount exceeds a certain sum.

(5) "Guide (a) Rates" means advisory (a) rates that have been developed by rate service organizations or company home office underwriters. They represent a rough average and are used as guides or signposts.

(6) "Guide (a) Manual" means a collection of Guide (a) Rates with rules and procedures for their use.

(7) "Increased Limits Factor" means a rating factor used to adjust a manual rate to limits higher than the basic manual limits.

(8) "Individual Risk Filing" means a filing of the insurance policy of an individual risk which is submitted to the commissioner. It shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, the underwriter's explanation for the filing, premium development, and the appropriate filing transmittal forms and filing fee.

(9) "Self-Insured Retention" means that portion of a risk or potential loss which is assumed by an insured. It may be in the form of a deductible, self-insurance, or no insurance. For the purpose of this rule, "self-insured retention" is limited to amounts of at least \$50,000 or more.

(10) "Umbrella Liability Insurance" means a coverage basically affording high limit coverage in excess of the limits of the primary policies as well as additional liability coverages. These additional coverages are usually subject to a substantial self-insured retention. The term "umbrella" is derived from the fact that it is a separate policy over and above any other basic liability policies the insured may have.

R590-127-5. Filing of Procedures.

Each insurer to which this rule applies shall maintain on file with the commissioner a general statement of company policies and procedures for underwriting and developing (a) rates and (a) rating. This statement shall include a delineation of the extent of home office and branch office authority with regards to the promulgation of (a) rates. This statement should include any formal guidelines established by the insurer for these situations. Any changes in general policy made subsequent to this initial filing will be subject to filing at the time of the change.

R590-127-6. (a) Rates.

(1) All (a) rates shall be exempt from the filing requirements of Section 31A-19a-203.

(2) Whenever an (a) rate is used the underwriting file shall contain full and supporting factual documentation verifying that it is an (a) rate as defined and showing the development of the (a) rate assigned by the underwriter:

(a) If the insurer has a Guide (a) Manual, the underwriter must start with the Guide (a) Rate suggested in the manual. If the underwriter feels adjustments to the suggested rate are appropriate, he shall document the steps in the development of the adjusted rate and show that he has followed the insurer's established procedure in the (a) rate development.

(b) If no Guide (a) Rate is available, the underwriter shall document the steps in the development of the (a) rate. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(c) As individual risk experience and characteristics are considered by the underwriter in developing the (a) rate, the only

rate modification factors that may be applied to an (a) rate are Increased Limits Factors, package factors, premium size factors, expense modification factors and deductible factors. If automated rating procedures automatically apply other modification factors, this fact should be considered in the development of the initial rate.

(3) If an underwriter determines to use an Increased Limits Factor which is different from the Guide (a) Increased Limits Factors of the Commercial Lines Manual, the underwriting file shall contain full and supporting factual data justifying the change in the Guide (a) Increased Limits Factor.

(4) Whenever an insurer renews a risk which contains (a) rates the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rate assigned and justification for the continuation of the (a) rate or the development of any new (a) rate. If the (a) rate previously assigned is revised more than +/- 25%, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the (a) rate development for the prior year and the development and explanation for the new (a) rate.

R590-127-7. (a) Rating, Special Risk Rating.

(1) Rates that are developed by an underwriter through an (a) rating process are exempt from the filing requirements of Section 31A-19a-203.

(2) An underwriter is permitted to use (a) rating only in the following circumstances:

(a) When it can be clearly demonstrated that a risk described by specific classifications in the Commercial Lines Manual presents unique or unusual conditions of exposure or hazard such that the application of the normal manual rate for that classification does not produce a reasonable and equitable rate for the risk. The underwriter should bear in mind that manual classifications are understood to be general in nature and, thus, may not exactly describe the risk being considered. For this reason (a) rating is not to be used simply because the risk does not exactly match the manual classification description, but must be substantially different.

(b) When the coverage to be written is broader or more restricted than that provided for by the manual definition of coverage as limited by applicable manual exclusions.

(c) When the insurer has developed a program for types of risks or coverages that are not included in the Commercial Lines Manual and for which there is limited statistical data for ratemaking purposes. or

(d) When a risk develops more than \$100,000 in annual manual basic limits unmodified premium for automobile liability, general liability, glass and theft insurance, individually, or \$250,000 in any combination. Boiler and machinery risks may be (a) rated provided the one-year deposit premium charged for the coverages afforded is \$50,000 or more.

(3) Whenever an underwriter uses (a) rating (special risk rating) the underwriting file shall contain a full explanation showing that the risk fits one of the circumstances described in Subsection (2). The file shall also contain full and supporting factual documentation showing the development of the rates assigned by the underwriter. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(4) Whenever an insurer renews a risk which has been (a) rated according to this section, the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rating and justification for the continuation of the (a) rating. Except for changes in premium basis, if the (a) rating produces a renewal premium which varies more than +/- 25% from the expiring policy premium, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy.

This filing shall contain the underwriter's documentation of the rate development for the prior term and the renewal term and an explanation for the change in premium.

R590-127-8. Commercial Excess and Umbrella Liability Insurance.

(1) Rates and rating plans for commercial excess insurance and umbrella liability insurance are exempt from the filing requirements of Section 31A-19a-203.

(2) The underwriting files of all excess insurance and umbrella liability insurance risks must contain full and supporting factual documentation justifying the rate and showing the development of the rate. This development should contain an analysis of such things as the specific definable loss potential characteristics with regards to its excess exposure and any other pertinent underwriting criteria.

(3) Whenever an insurer renews a commercial excess or umbrella liability policy the underwriting file shall contain documentation of the underwriter's reevaluation of the rate assigned and justification for the continuation of the rate or the development of any new rate.

R590-127-9. Penalties.

Failure to comply with this rule and to maintain the documentation as outlined shall be deemed a violation of this rule. Pursuant to Section 31A-2-308, any person found to be in violation shall forfeit to the state not more than \$1,000 for each violation.

R590-127-10. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

**KEY: insurance companies
December 14, 1999
Notice of Continuation August 20, 2019**

**31A-2-201
31A-19a-103**

R590. Insurance, Administration.**R590-129. Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment.****R590-129-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-129-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-129-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-129-4. Prohibited Acts and Practices.

The following acts and practices are prohibited:

1. refusing to insure or refusing to continue to insure;
2. limiting the amount, extent, or kind of coverage available to an individual; or
3. charging a higher rate for the same coverage solely because of blindness, partial blindness, or physical or mental impairment except where the refusal, limitation, or rate differential is based upon sound actuarial principles or reasonably anticipated loss experience.

Refusal to insure includes denial by an insurer of disability insurance coverage on the basis that the policy defines "disability" as being presumed in the event that the insured suffers the loss of sight. It is not a violation of this rule to exclude from coverage any disability consisting of blindness, partial blindness, physical or mental impairment when the condition existed at the time the policy was issued.

KEY: insurance companies**1989****Notice of Continuation August 20, 2019****31A-2-201****31A-23a-402**

R590. Insurance, Administration.**R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.****R590-167-1. Authority, Purpose and Scope.**

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a), 31A-30-106(1)(k), and 31A-30-106.1(10).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to prescribe the manner in which case characteristics may be used;

(vi) to regulate the use and establishment of separate classes of business;

(vii) to provide for portability; and

(viii) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case

characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means a rating factor other than a case characteristic allowed under Sections 31A-30-106 or 31A-30-106.1, as applicable, including exact age, gender, family composition, the health status, claims experience, duration of coverage, or any similar characteristic related to the demographics or the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

R590-167-3. Applicability and Scope.

(1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans

are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) For policies issued or renewed on or after January 1, 2011, a covered carrier may not establish a separate class of business without a prior approval of the commissioner.

(3) In order to receive an approval to establish a separate class of business under Subsection R590-167-4(2) the covered carrier shall submit a filing in compliance with R590-220 that includes:

(a) a written request to establish a separate class of business;

(b) description of all criteria employed by the carrier, or any of its agents, for determining membership in the class of business;

(c) disclosure of which health benefit plans will be available for purchase in the class and any significant limitations related to the purchase of such plans; and

(d) demonstrate to the satisfaction of the commissioner that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier;

(iii) the covered carrier provides coverage to one or more association groups;

(e) a list of previously approved classes of business; and

(f) for each class of business used prior to January 1, 2011, a certification that the continued use of the class of business is necessary due to conditions specified in Subsection R590-167-4(3)(d).

(4) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

(i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier;

(iii) the carrier has provided notice to the commissioner of this state at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection R590-167-5(1)(c)(i) for the health benefit plans covering individuals and small employers in this state; and

(iv) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation, risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier intends to maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into

an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(c)(i) for the individual or small employer health benefit plans in that state.

(d)(i) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Sections 31A-30-106 or 31A-30-106.1, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(ii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(i).

(iii) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) A covered carrier that assumes one or more health benefit plans from another carrier and intends to maintain such health benefit plans as a separate class of business, shall submit a filing requesting approval to establish a separate class of business as

provided in Subsection R590-167-4(3). The assumption shall not take place prior to approval of the request by the commissioner.

(4) A covered carrier that assumes one or more health benefit plans from another carrier and intends to incorporate them into an existing class of business shall comply with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained temporarily as a separate class of business, deemed to be approved by the commissioner under Subsection 31A-30-105(2)(b)(ii). A covered carrier may exceed the limitation contained in Subsection 31A-30-105(4) due solely to such assumption.

(b) During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(c) The transfers authorized in Subsection R590-167-5(4)(b) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(d) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(b) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(e) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(b). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(f) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of Subsections 31A-30-106(3)(a) or 31A-30-106.1(8)(a), as applicable.

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition under Subsection R590-167-5(4) upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate;

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5; and

(vi) a request for approval for a change in rating method must be submitted as a separate filing. The filing description must state in the first line of the first paragraph, "REQUEST FOR APPROVAL FOR CHANGE IN RATING METHOD."

(3) The rate manual developed pursuant to Subsections 31A-30-106(4), 31A-30-106.1(13), and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier offering a health benefit plan to an individual may not use case characteristics other than those specified in Subsection 31A-30-106(1)(f) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Subsection 31A-30-106(1)(b).

(b)(i) A covered carrier offering or renewing a health benefit plan to a small employer, may not use case characteristics other than:

(A) age band, as specified in Subsection 31A-30-106.1(6)(a), applicable to the age of the employee;

(B) geographic area;

(C) family composition tier, as specified in Subsection 31A-30-106.1(6)(c);

(D) gender, as specified in in Subsection 31A-30-106.1(6)(d);

(E) Medicare coordination, as specified in Subsection 31A-30-106.1(6)(e); and

(F) wellness programs, as specified in Subsection 31A-30-106.1(6)(f).

(ii) For any geographic area used as a case characteristic by a covered carrier, base rates for any small employer health benefit plan shall be subject to the following limitations:

(A) for any age band, the ratio of the base rate for the family tier to the base rate for employee only tier, shall not exceed the ratio in Subsection 31A-30-106.1(8); and

(B) for any family composition tier, the ratio of the base rate for any age band to the base rate for "less than 20" age band, may not exceed the following:

- (I) 1.22 for age band 20 to 24;
- (II) 1.34 for age band 25 to 29;
- (III) 1.46 for age band 30 to 34;
- (IV) 1.60 for age band 35 to 39;
- (V) 1.80 for age band 40 to 44;
- (VI) 2.20 for age band 45 to 49;
- (VII) 2.80 for age band 50 to 54;
- (VIII) 3.60 for age band 55 to 59;
- (IX) 4.25 for age band 60 to 64; and
- (X) 5.00 for age band over 65.

(c) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(d) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(e) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(f) The rate manual shall provide for premium rates to be developed in a two-step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics. The base rates shall reflect only the allowable case characteristics. The base rates for an individual health benefit plan offered to two individuals with the same case characteristics shall be identical. The base rates for a small employer health benefit plan offered to two small employer groups with the same case characteristics shall be identical.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5, to reflect the risk characteristics.

(g) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than \$5 per month per individual or employee and is applied in a uniform

manner to each health benefit plan in a class of business.

(5) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106.1(3) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(iii) Trend increases are limited to a 12-month period. If an insurer chooses to use trend in the rate manual, a new filing must be submitted for each 12-month period. The detailing of the rate calculation must specify how trend is being implemented, by plan or calendar year, and how the rates are determined.

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(6)(a) Except as provided in Subsection R590-167-6(6)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(6)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsections 31A-30-106(1)(b) and 31A-30-106.1(2)(b).

(7)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsections 31A-30-106.1(1) through 31A-30-106.1(6) with respect to such trust.

(b) A request made under Subsection R590-167-6(7)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that violates the provisions of Section 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

R590-167-10. Status of Carriers as Covered Carriers.

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small

employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Sections 31A-30-106 and 31A-30-106.1 and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Subsections 31A-30-106(4)(b) or 31A-30-106.1(9)(b), or both, as applicable, and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall:

(A) contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;"

(B) list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167; and

(C) include a list of all affiliated insurers, define each class of business which includes the commissioner's approval date if more than one class of business exists, and the SERFF filing number for each applicable rate manual filing.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(c) The actuarial certification required by Subsections 31A-30-106(4)(b) and 31A-30-106.1(13)(b) and this subsection, applies only to an individual or small employer health benefit plan issued prior to March 23, 2010, and has maintained grandfathered status.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iv) an identification of the carrier's classes of business as described in Subsection R590-167-4(1);

(v) all information required by 45 CFR 154.215(b)(1);

(vi) for a rate increase subject to review as required by 45 CFR 154.200(a)(1), all information required by 45 CFR 154.215(b)(2); and

(vii) all information required by the Utah Accident and Health Comprehensive Health Insurance Rate Filing Checklist.

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan.

R590-167-12. Records.

(1) Except as provided in Subsection R590-167-12(2), records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) The commissioner finds the following to be considered a public record as defined in Subsection 63G-2-103:

(a) the status of a filing described herein and submitted to the department; and

(b) all information submitted as required by Subsections R590-167-11(2)(v) and (vi), and R590-220-10(2)(b)(iii)(I).

R590-167-13. Penalties.

A person 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.

R590-167-14. 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 will not be affected by the invalid provision.

KEY: health insurance

March 23, 2016

Notice of Continuation August 20, 2019

31A-30-106

31A-30-106.1

R590. Insurance, Administration.

31A-22-623

R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.**R590-194-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under an accident and health insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all accident and health insurance policies sold in Utah which contain major medical benefits.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment (DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law**December 1, 1999****Notice of Continuation August 20, 2019****31A-2-201****31A-22-614.5**

R590. Insurance, Administration.**R590-229. Annuity Disclosure.****R590-229-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-229-2. Purpose.

The purpose of this rule is to:

(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:

(a) the minimum information that must be disclosed; and
(b) the method for disclosing it in connection with the sale of annuity contracts; and

(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

R590-229-3. Scope.

(1) This rule applies to individual and group annuity contracts and certificates except:

(a) registered or non-registered variable annuities or other registered products;

(b)(i) annuities used to fund:

(A) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(B) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

(C) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (1)(b)(i) of this section, this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(c) structured settlement annuities; and

(d) funding agreements.

(2) The disclosure document requirements of this rule do not apply to immediate and deferred annuities that contain no non-guaranteed elements.

R590-229-4. Incorporation by Reference.

The following Buyer's Guides are hereby incorporated by reference within this rule:

(1) "Buyer's Guide for Deferred Annuities" dated 2013, as adopted by and available from the National Association of Insurance Commissioners;

(2) "Buyer's Guide for Deferred Annuities - Fixed" dated 2013, as adopted by and available from the National Association of Insurance Commissioners; and

(3) "Buyer's Guide for Deferred Annuities - Variable" dated 2013 as adopted by and available from the National Association of Insurance Commissioners.

R590-229-5. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is

limited to, the language contained in the "Buyer's Guide for Deferred Annuities," dated 2013, the Buyer's Guide for Deferred Annuities - Fixed" dated 2013, and the "Buyer's Guide for Deferred Annuities - Variable" dated 2013.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

(7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(9) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-6. Appropriate Buyer's Guide.

(1) The "Buyer's Guide for Deferred Annuities" shall be considered the appropriate Buyer's Guide for an annuity product.

(2) Notwithstanding Subsection (1) for a non-variable annuity product, the "Buyer's Guide to Deferred Annuities - Fixed" may be used as the appropriate Buyer's Guide.

(3) If an insurer elects to provide a Buyer's Guide for a variable annuity product, the insurer may use either the "Buyer's Guide for Deferred Annuities" or the "Buyer's Guide for Deferred Annuities - Variable."

R590-229-7. Standards for the Disclosure Document and Buyer's Guide.

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 7(2) of this section and the appropriate Buyer's Guide, as described in Section 6.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting

prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

R590-229-8. Report to Contract Owners.

For an annuity in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end of the current report period.

R590-229-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 65 days after the effective date.

R590-229-10. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, annuity disclosure

May 27, 2014

Notice of Continuation August 20, 2019

31A-2-201

31A-22-425

R590. Insurance Administration.**R590-277. Managed Care Health Benefit Plan Policy Standards.****R590-277-1. Authority.**

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a), 31A-2-202, 31A-23a-402(8), 31A-23a-412, and 31A-45-103.

R590-277-2. Purpose and Scope.

(1) The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of a managed care health benefit plan policy in order to:

- (a) facilitate public understanding and comparison;
- (b) prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims; and
- (c) provide for full disclosure.

(2) This rule applies to any health benefit plan issued by a managed care organization to an individual or group, including policies issued to an association, trust, discretionary group, or other similar group.

(3) This rule does not apply to short-term limited duration health insurance that complies with both R590-85, Individual Accident and Health Insurance and Individual and Group Medicare Supplement rates, and R590-126, Accident and Health Insurance Standards.

R590-277-3. Definitions.

The definitions in Sections 31A-1-301, 31A-22-625, 31A-30-103 and 31A-45-102, and Rules R590-126, R590-192, R590-261 and R590-266, shall apply for the purposes of this rule.

R590-277-4. Prohibited Policy Provisions.

(1) A health benefit plan may not impose any preexisting condition limitation or exclusion provisions.

(2) Limitations or exclusions. Unless otherwise required by law, a policy may not limit or exclude coverage or benefits by type of illness, accident, treatment, or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges;
- (d) administrative exams and services;
- (e) applied behavioral analysis therapy, except as required by Section 31A-22-642;
- (f) aviation;
- (g) axillary hyperhidrosis;
- (h) benefits provided under:
 - (i) Medicare or other governmental program, except Medicaid;
 - (ii) state or federal worker's compensation; or
 - (iii) employer's liability or occupational disease law;
- (i) fitness training, exercise equipment, or membership fees to a spa or health club;
- (j) charges for appointments scheduled and not kept;
- (k) chiropractic care;
- (l) complementary and alternative medicine;
- (m) corrective lenses, and examination for the prescription or fitting thereof, except lens implant following cataract surgery and as required by R590-266;
- (n) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved party; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
- (o) custodial care;

- (p) dental care or treatment;
- (q) dietary products, except as required by R590-194;
- (r) educational and nutritional training, except as required by R590-200;

- (s) experimental or investigational services;
- (t) expenses before coverage begins or after coverage ends;
- (u) felony, riot or insurrection, when it has been determined the covered person was a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gender reassignment, except as required by Section 1557 of the Patient Protection and Affordable Care Act;

- (y) gene therapy;
- (z) genetic testing;
- (aa) hearing aids, and examination for the prescription or fitting thereof;

(bb)(i) a loss directly related to the insured's voluntary participation in an activity where the insured:

(A) is found guilty of an illegal activity in a criminal proceeding; or

(B) is found liable for the activity in a civil proceeding.

(ii) A guilty finding includes a plea of guilty, a no contest plea, and a plea in abeyance;

- (cc) infertility services;
- (dd) mental health and substance use disorder services, except as required by Section 31A-22-625 and R590-266;

(ee) injury as a result of a motor vehicle, to the extent the covered person is required by law to have no-fault coverage. The exclusion applies only to charges up to the minimum coverage required by law, whether or not such coverage is in effect;

- (ff) nuclear release;
- (gg) refractive eye surgery;
- (hh) rehabilitation or rehabilitative therapy services, such as physical, speech, and occupational, except as required to correct an impairment caused by a covered accident or illness, or as required by R590-266;

(ii) respite care;

(jj) rest cures;

(kk) service in the armed forces or units auxiliary to it;

(ll) services that are not medically necessary;

(mm) services performed by the covered person's parent, spouse, sibling or child, including a step or in-law relationship;

(nn) services for which no charge is normally made in the absence of insurance;

(oo) services in connection with a prearranged surrogacy agreement where the covered person relinquishes a baby and receives payment or other compensation arising out of such services. This exclusion does not apply to services for the baby;

- (pp) sexual dysfunction procedures, equipment and drugs;
- (qq) shipping and handling;
- (rr) telephone/electronic consultations;
- (ss) territorial limitations outside the United States;
- (tt) terrorism, including acts of terrorism;
- (uu) transplants, except as required by R590-266;
- (vv) transportation, except medically necessary ambulance services;

(ww) war or act of war, whether declared or undeclared; or

(xx) others that in the opinion of the commissioner are not inequitable, misleading, deceptive, obscure, unjust, unfair or

unfairly discriminatory to the policyholder, beneficiary or covered person under the policy.

R590-277-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in R590-277-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse and dependents. Except for an employer sponsored health plan, a policy;

(a) may not provide for termination of coverage of the spouse or a dependent solely because of the occurrence of an event specified for termination of coverage of the policyholder, other than for nonpayment of premium; and

(b) shall provide that in the event of the policyholder's death the spouse of the insured shall become the insured.

(3) Cancellation, renewability, and termination. A policy cancellation, renewability and termination provision shall comply with Sections 31A-22-618.6 or 31A-22-618.7.

(4) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medically necessary transplant expenses of a live donor.

(5) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

(6)(a) Except as provided in Subsection (b), a completed application shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to, or upon delivery, of the policy.

(b) Subsection (6)(a) does not apply to:

(i) an employer sponsored health benefit plan; or

(ii) an individual policy where application was effectuated directly through healthcare.gov.

(7) A managed care organization offering a health benefit plan to an individual or small employer:

(a) shall offer coverage to all individuals and eligible employees on a guaranteed basis without regard to health status;

(b) may modify coverage at the time of renewal to the extent that such modification is consistent with federal and state law and effective on a uniform basis among all individuals in the health benefit plan; and

(c) must renew or continue coverage at the option of the policyholder, subject to Subsections 31A-22-618.6 and 618.7.

R590-277-6. Required Provisions.

(1) A policy and certificate shall include a renewal, continuation, and nonrenewal provision. The provision shall be appropriately captioned, appear on the first page of the policy and certificate, and clearly state the duration of coverage.

(2) Endorsement acceptance.

(a) Except for an endorsement by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, an endorsement added to a policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, an endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(3) Additional premium. Where a separate additional premium is charged for benefits provided in connection with an endorsement, the premium charge shall be set forth in the policy or certificate.

(4) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import, shall include a definition of the terms and an

explanation of the terms in its accompanying outline of coverage or certificate.

R590-277-7. Restrictions Relating to Premium Rates.

(1) The premium charged shall not be adjusted more frequently than annually, except that the premium rates may be changed:

- (a) to reflect changes to the enrollment;
- (b) to reflect changes to the health benefit plan; or
- (c) as expressly permitted by federal or state law.

(2) Premium rates may vary only with respect to the particular coverage involved on the basis of the following:

(a) whether the plan covers an individual or family:

(i) the total family premium shall include only the premiums for all covered family members over the age of twenty-one and the three oldest children under the age of twenty one; and

(ii) any rating variation on the basis of age or tobacco use must be applied separately to the portion of the premium attributable to each covered family member;

(b) geographic rating area, determined by the policyholder's primary address, as follows:

(i) Area 1, comprised of Cache and Rich counties;

(ii) Area 2, comprised of Box Elder, Morgan, and Weber counties;

(iii) Area 3, comprised of Davis, Salt Lake, Summit, Tooele, and Wasatch counties;

(iv) Area 4, comprised of Utah county;

(v) Area 5, comprised of Iron and Washington counties; and

(vi) Area 6, comprised of Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Juab, Kane, Millard, Piute, San Juan, Sanpete, Sevier, Uintah, and Wayne counties;

(c) age of each enrollee, as of the date of the policy issuance or renewal, in accordance with the Utah Individual and Small Employer Health Benefit Plan Age Curve; and

(d) tobacco rate factor, not greater than 1.5.

(3) R590-277-7(2) does not apply to:

(a) a large employer health benefit plan; or

(b) an individual or small employer health benefit plan issued prior to January 1, 2014 in which the policy rating complies with:

(i) Title 31A-30, Individual, Small Employer, and Group Health Insurance Act; and

(ii) Rule R590-167, Individual, Small Employer, and Group Health Benefit Plan Rule.

R590-277-8. Existing Policies.

A policy issued prior to the effective date of this rule shall be amended to comply with this rule on the first policy anniversary following the effective date of this rule.

R590-277-9. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-277-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule for policies issued or renewed on or after January 1, 2020.

R590-277-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, health insurance

August 20, 2019

31A-45-103

31A-2-201(3)(a)

31A-23a-402(8)

31A-23a-412

31A-2-202

R628. Money Management Council, Administration.**R628-22. Conditions and Procedures for the Use of Negotiable Brokered Certificates of Deposit.****R628-22-1. Authority.**

This rule is issued pursuant to Section 51-7-11(3)(p) and 51-7-17(4).

R628-22-2. Scope.

This rule applies to all public treasurers who purchase negotiable brokered certificates of deposit.

R628-22-3. Purpose.

The purpose of this rule is to establish requirements for the investing of public funds in negotiable brokered certificates of deposit.

R628-22-4. Definitions.

For purposes of this rule the following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (1) Council;
- (2) Public funds;
- (3) Public treasurer;
- (4) Certified dealer, and
- (5) Certified investment adviser.

"Negotiable brokered certificate of deposit" means: a certificate of deposit issued by a financial institution that is guaranteed by the applicable federal deposit insurance limit and that can be sold in a secondary market, but cannot be cashed in before maturity.

"Step up" negotiable brokered certificates of deposit means: the interest rate automatically increases at specified intervals.

"LIBOR" means: London Interbank Offered Rate, which is a benchmark interest rate or LIBOR's subsequent replacement.

R628-22-5. General Rule.

(1) A public treasurer may invest public funds in negotiable brokered certificates of deposit only through a certified investment adviser or a certified broker dealer. These negotiable certificates of deposit shall be:

- (a) limited to a maximum maturity of five years from the time of purchase settlement;
- (b) limited to a purchased par value not to exceed 97% of the stated applicable federal deposit insurance limit per each financial institution at the time of purchase, and;
- (c) limited to purchases where the purchase price does not exceed par.

(2) The public treasurer shall ensure that there is no overlap of purchased certificates of deposits in other deposit accounts of the financial institution when purchasing brokered certificates of deposit that would cause the public entity to exceed the applicable federal deposit insurance limit.

R628-22-6. Allowed Structures.

Structures allowed for negotiable brokered certificates of deposit are:

- (1) Fixed rate;
- (2) callable;
- (3) Step up rates, and
- (4) Floating rate certificates of deposit based on Libor or Libor's subsequent replacement.

R628-22-7. Types of Structures Not Allowed.

Negotiable brokered deposits that are issued based on the following are not allowed:

- (1) inflation linked;
- (2) index linked;
- (3) equity linked, or
- (4) other types of derivate linked securities.

R628-22-8. Reporting Requirements.

A public entity shall file a report with the Council of negotiable brokered CD's along with all other deposits and investments on or before July 31 and January 31 of each year for deposits held on June 30 and December 31 respectively.

**KEY: public funds, investments, brokered certificates of deposit
August 7, 2019**

**51-7-17(4)
51-7-11(3)(p)**

R657. Natural Resources, Wildlife Resources.**R657-12. Hunting and Fishing Accommodations for People With Disabilities.****R657-12-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63G-3-201, this rule provides the standards and procedures for a person with disabilities to:

- (1) obtain a certificate of registration for taking wildlife from a vehicle;
- (2) obtain a fishing license as authorized under Section 23-19-36(1);
- (3) obtain a certificate of registration to participate in companion hunting;
- (4) obtain a certificate of registration to receive a limited entry season extension;
- (5) obtain a certificate of registration to receive a general deer or elk season extension;
- (6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or
- (7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

R657-12-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Blind" means the person:
 - (i) has no more than 20/200 visual acuity in the better eye when corrected; or
 - (ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.
 - (b) "Crutches" means a staff or support designed to fit under or attach to each arm, including a walker, which improve a person's mobility that is otherwise severely restricted by a permanent physical injury or disability.
 - (c) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.
 - (d) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which severely impedes a person's mobility.
 - (e) "Telescopic sights" means an optical or electronic sighting system that magnifies the natural field of vision beyond 1X and is used to aim a firearm, bow or crossbow.
 - (f) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use any legal hunting weapon or fishing device.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

- (1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.
- (2) A person may obtain this license at any division office.
- (3) The division shall accept the following as evidence of disability:
 - (a) obvious physical impediment;
 - (b) use of any mobility device described in Section R657-12-2(b);
 - (c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or
 - (d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be

permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons -

Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for an extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer, Elk and Wild Turkey Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer, elk or wild turkey season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may include:

(i) a hunt immediately preceding the general any weapon buck deer season opening date published in the guidebook of the Wildlife Board for taking big game;

(A) the extension may not apply to general any weapon deer hunts with season length restrictions.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the guidebook of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the guidebook of the Wildlife Board for taking big game.

(d) The extended general wild turkey season may occur seven days prior to the limited entry turkey hunt season as published in the guidebook of the Wildlife Board for taking Upland Game and Wild Turkey.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use

of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows and Draw-Locks.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow or draw-lock to hunt big game, cougar, bear, turkey, waterfowl, small game or carp during the respective archery, any weapon hunting, or fishing seasons as provided in the applicable guidebooks of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow or draw-lock:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow or draw-lock; or

(ii) a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must comply with the requirements in R657-5-8(3), except a crossbow used to hunt turkey, waterfowl, or small game may have a minimum draw weight of 60 pounds.

(3)(a) Any crossbow or drawlock used to hunt carp must have a:

(i) reel with line capable of tethering the bolt to restrict the flight distance; and

(ii) positive safety mechanism.

(4) Conventional bows equipped with a draw-lock and used to hunt big game must conform with the minimum draw weights, and arrow and broadhead restrictions contained in R657-5.

R657-12-9. Telescopic Sights.

(1) A person who has a permanent vision impairment leaving them with worse than 20/40 corrected visual acuity in the better eye may receive a Certificate of Registration to use telescopic sights when otherwise prohibited by the rules and proclamations of the Wildlife Board; if in the professional opinion of the eye care provider telescopic sights will sufficiently mitigate the effects of the disability to enable the person to:

(a) adequately discern between lawful and unlawful wildlife species and species genders; and

(b) safely discharge a firearm or bow in the field.

(2) A person with a qualified vision impairment may obtain a Certificate of Registration from the Division to use telescopic sights, when otherwise prohibited, by submitting a signed statement from a licensed ophthalmologist, optometrist or physician verifying that:

(a) the applicant has a permanent vision impairment resulting in worse than 20/40 corrected visual acuity in the better eye; and

(b) telescopic sights will sufficiently mitigate the effects of the vision impairment to enable the applicant to:

(i) adequately discern between lawful and unlawful wildlife species and species genders; and

(ii) safely discharge a firearm or bow in the field.

R657-12-10. Discounted Licenses for Veterans with Disabilities.

(1)(a) A resident who has a service-connected disability of 20% or more may purchase a discounted 365-day or multi-year hunting, fishing, or combination license upon furnishing verification of a service-connected disability and paying the fee established in the approved fee schedule.

(b) Fees for multi-year service-connected disability licenses will be calculated according to the process identified in R657-45-3(2)(c).

(2)(a) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof and the Army and Air National Guard of the United States.

(b) "Service-connected disability" means injury or illness incurred or aggravated:

(i) while in Armed Forces service; and
(ii) that is recognized by the United States Department of Veterans Affairs or by a branch of the Armed Forces.

(c) "Verification of Service-Connected Disability" means an official written letter, statement, or card issued by the Department of Veterans Affairs or by a branch of the Armed Forces certifying that the person has a service-connected disability with a disability rating of 20% or higher.

(3)(a) A service-connected disability fishing license is not available to an individual who is eligible to fish without a license under Section 23-19-14 or to receive a free fishing license under Section 23-19-36.

(b) Applications for service-connected disability licenses may be submitted at division offices and may be issued by mail, online or at license agents.

(4) The purchaser may be required to complete an affidavit of the service-connected disability at the time of application.

R657-12-11. Administrative and judicial review.

(1) A person may request administrative review of the division's partial or complete denial of a certificate of registration under this chapter by delivering a written request for administrative review to the division director or designee within 30 days of the date of denial.

(2) The request for administrative review shall include:

(a) the name, address, and phone number of the petitioner;

(b) a specific description of the disability involved and the physical limitations imposed by that disability;

(c) a specific description of the accommodations requested to mitigate the physical limitations caused by the disability; and

(d) verifiable medical or other information describing the disability and the medical need for the requested accommodation.

(3) A person may appeal the division director's or designee's decision under Subsection (1) by filing a request for agency action pursuant to R657-2.

KEY: wildlife, wildlife law, disabled persons, fishing

August 22, 2019

23-20-12

Notice of Continuation August 15, 2017

63G-3-201

R657. Natural Resources, Wildlife Resources.**R657-45. Wildlife License, Permit, and Certificate of Registration Forms and Terms.****R657-45-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-14-19, 23-19-2 and 23-19-7 the Wildlife Board has established this rule for prescribing the forms and terms of a wildlife license, permit, and certificate of registration.

R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.

(1) A license, permit, and certificate of registration issued for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The license, permit, and certificate of registration forms shall include the licensee's customer identification number, name, date of birth, address, height, weight, eye color, hair color, gender, and any other information the Division of Wildlife Resources may request.

R657-45-3. License Terms and Renewal.

(1)(a) Upon paying the prescribed fee and satisfying the criteria for issuance, a person may obtain a resident or nonresident fishing, hunting, or combination license valid for:

- (i) 365 days (one year);
- (ii) 730 days (two years);
- (iii) 1095 days (three years);
- (iv) 1460 days (four years); or
- (v) 1825 days (five years).

(b) In addition to the license term prescribed in Subsection (1)(a), a person may obtain a:

- (i) three or seven day resident or nonresident fishing license; or
- (ii) three day nonresident hunting license.

(2)(a) Except as provided in Subsections (b) through (d), a multi-year fishing, hunting, and combination license under Subsection (1)(a) is available to residents and nonresidents at a discounted, adult license fee rate based on residency, license type and license term.

(i) A multi-year license is available to youth only at the adult license fee rate.

(b) A resident senior, age 65 and older, may obtain a multi-year fishing, hunting, or combination license at the 365 day, senior license fee rate multiplied by the number of years in the license term.

(c) A resident disabled veteran that is eligible for a service-connected disability license under Section 23-19-38.3 and R657-12-10, may obtain a multi-year license at the reduced 365 day license fee rate multiplied by the number of years in the license term.

(3) A person with a current, one to five year hunting, fishing, or combination license may renew the license by purchasing:

- (a) a new license on or after its expiration date; or
- (b) the same license for a term prescribed in Subsection (1)(a) within six months of the expiration date on the unexpired license.

(i) A license renewed under Subsection (3)(b) is effective on the date of purchase and remains valid for a period equal to the sum of the remaining days on the unexpired license and the applicable term on the renewal license.

(4) Except as provided in Subsections (4)(a), a fishing, hunting, or combination license issued under this Section remains valid if the licensee subsequently changes residency during the term of license.

(a) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(5)(a) A resident that establishes a new domicile outside Utah during the unexpired term of a Utah resident fishing, hunting, or combination license, shall notify the Division of the change prior to purchasing a resident hunting, fishing, or trapping license in any

other state or country.

(b) Upon receiving notice of a domicile change under Subsection (5)(a), the Division will issue a free nonresident replacement license for the remaining term of the resident license.

(c) The Division may charge a handling fee for a residency based license exchange under this Subsection.

(d) The pro rata difference between the nonresident and resident license fee will not be refunded to a person that establishes Utah residency during the term of a nonresident license.

(6) A person that purchases a hunting permit and subsequently changes residency may lawfully use that permit for the applicable hunting season without notifying the Division of residency change.

R657-45-4. Persons Participating in Youth Organization or School Activity Authorized to Fish Without a License.

(1)(a) A school or youth organization, as defined in Subsection (5), that sponsors a recreational or instructional fishing activity for youth may obtain a certificate of registration from the Division authorizing participating youth to fish without a license.

(b) A school or youth organization may obtain a certificate of registration by submitting an online application with the Division specifying the:

(i) name and address of the school or youth organization applicant, including verification it qualifies as a school or youth organization, as defined in Subsection (5);

(ii) date and location of the fishing activity;

(iii) fishing activity is part of a recreational or instructional program of the school or youth organization;

(iv) fishing activity is officially sanctioned or authorized by the school or youth organization;

(v) approximate number of youth that will participate in the fishing activity, including verification that each youth is:

(A) under 16 years of age; and

(B) an enrolled student in the school or a registered member of the youth organization;

(vi) name, address, and age of the adult leader that will supervise the fishing activity;

(vii) adult leader will:

(A) possess a valid Utah fishing or combination license; and

(B) provide instruction and training to the youth participants on Utah fishing laws and regulations; and

(viii) adult leader has obtained from the school or youth organization a valid tour permit or written documentation that specifies:

(A) the date and place of the fishing activity;

(B) the name of the adult leader that will supervise the fishing activity; and

(C) that the activity is officially sanctioned or authorized by the school or youth organization.

(2)(a) Upon receipt of a complete application from a school or youth organization and upon determination that the requirements of this Section are satisfied, the Division may issue a certificate of registration authorizing the identified youth participating in the sponsored fishing activity to fish without a license.

(b) The certificate of registration will include the following information:

(i) name and address of the school or youth organization.

(ii) name, address, and age of the adult leader supervising the fishing activity;

(iii) date of the fishing activity;

(iv) location of the fishing activity; and

(v) approximate number youth participating in the fishing activity.

(3) A youth participating in a fishing activity on a school or youth organization certificate of registration issued under this Section may fish without a license, provided:

(a) the youth is:

(i) a member of the youth organization or a student enrolled in the school; and

- (ii) younger than 16 years old; and
- (b) the fishing is conducted:
 - (i) in compliance with all Utah fishing laws and regulations;
 - (ii) on the date and at the location identified on the certificate of registration; and
 - (iii) under the supervision of the adult leader identified on the certificate of registration.
- (4) The adult leader supervising a youth fishing activity under this section shall:
 - (a) be 18 years of age or older;
 - (b) possess a valid Utah fishing or combination license;
 - (c) provide direct supervision to the activity participants; and
 - (d) instruct the activity participants on Utah fishing laws and regulations.
- (5) As used in this section:
 - (a) "School" means an elementary school or a secondary school that:
 - (i) is a public or private school located in the state; and
 - (ii) provides student instruction for one or more years of kindergarten through grade 9.
 - (b) "Youth organization" means a local Utah chapter of:
 - (i) the Boy Scouts of America;
 - (ii) the Girls Scouts of the USA; or
 - (iii) an organization that:
 - (A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and
 - (B) promotes character building through outdoor activities.

KEY: license, permit, certificate of registration
August 22, 2019
Notice of Continuation April 12, 2018

23-19-2

R657. Natural Resources, Wildlife Resources.**R657-54. Taking Wild Turkey.****R657-54-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices wild turkey.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Falconry" means the sport of taking quarry by means of a trained raptor.

(e) "Fall season permit" means any turkey hunting permit having season dates on or between August 1 to March 14, excluding turkey permits issued pursuant to R657-41 and turkey control permits issued pursuant to R657-69-6.

(f) "Spring season permit" means any turkey hunting permit having season dates on or between March 15 to July 31, excluding turkey permits issued pursuant to R657-41 and turkey control permits issued pursuant to R657-69-6.

(g) "Wild Turkey" as used in this rule means a wild, free-ranging turkey and does not include a privately-owned wild turkey, domestic turkey, or wild-domestic hybrids.

R657-54-3. Obtaining Permits for Wild Turkey.

(1) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(2) General season wild turkey permits are issued over-the-counter consistent with this rule and the guidebook of the Wildlife Board for taking upland game and wild turkey.

(3) Limited entry permits for wild turkey are issued pursuant to R657-62-25.

(4) Wild turkey control permits and turkey control permit vouchers are issued pursuant to R657-69.

(5) Wild turkey conservation and sportsman's permits are issued pursuant to R657-41.

(6) Wild turkey permits available through the Expo are issued pursuant to R657-55.

(7) Wild turkey poaching-reported reward permits are issued pursuant to R657-51.

R657-54-4. Authorized Weapons.

Wild turkey may be taken only with:

(a) Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts;

(b) a shotgun, firing shot sizes BB and smaller diameter; or

(c) a rimfire firearm during any fall season permit.

R657-54-5. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(2) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-6. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-7. Falconry.

Falconers may not release a raptor on wild turkeys during the spring seasons. Falconers may release a raptor on wild turkeys during the fall season, as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-8. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, recorded turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-9. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-10. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-11. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-12. Identification of Species and Sex.

(1) During the spring seasons the head and beard must remain attached to the carcass of wild turkey while being transported.

(2) During the fall season only the head must remain attached to the carcass of wild turkey while being transported.

R657-54-13. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

- (i) Annabella;
- (ii) Bear River Trenton Property Parcel;
- (iii) Bicknell Bottoms;
- (iv) Blue Lake;
- (v) Browns Park;
- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;
- (xviii) Mills Meadows;
- (xix) Montes Creek;
- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Vernal; and
- (xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-54-14. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

- (1) Salt Lake Airport boundaries as posted.
- (2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.
- (3) All State Waterfowl Management Areas except Browns Park and Stewart Lake
- (4) All National Wildlife Refuges unless declared open by the managing authority.
- (5) Military installations, including Camp Williams, are closed to hunting and trespassing.

R657-54-15. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-16. Spotlighting.

- (1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-54-17. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-18. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-19. Wild Turkey Poaching-Reported Reward Permits.

Wild turkey poaching-reported reward permits are issued pursuant to R657-51.

R657-54-20. Season Dates, Bag and Possession Limits, and Areas Open.

(1) Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not obtain or possess more than:

- (a) one permit during the spring season annually; or
- (b) three permits during the fall season annually.

KEY: wildlife, wild turkey, game laws

August 9, 2018

23-14-18

Notice of Continuation August 5, 2019

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-68. Trial Hunting Authorization.****R657-68-1. Purpose and Authority.**

Pursuant to Sections 23-14-18 and 23-14-19, this rule implements the trial hunting authorization program established in Section 23-19-14.6 to expand public participation in hunting sports by allowing a person to temporarily obtain specified hunting licenses and permits and participate in hunting activities on a trial basis without first satisfying regular hunter education requirements.

R657-68-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Commercial hunting area" means a parcel of land where privately owned game birds are released under Section 23-17-6 and R657-22 for the purpose of allowing hunters to take them for a fee.
 - (b) "Division drawing" means a random selection process administered by the division or under its authority for the purpose of allocating hunting permits to the public.
 - (i) "Division drawing" includes the wildlife expo permit drawing administered under R657-55.
 - (c) "Multi-year license" means a license issued by the division under R657-45-3 that is valid for a period exceeding 365 days.
 - (d) "Supervising hunter" means a person qualified under R657-68-5(1)(b) that accompanies a trial hunter while participating in hunting activities.
 - (e) "Trial hunter" means a person who possesses a valid hunting license or permit obtained with a trial hunting authorization pursuant to this rule.
 - (f) "Trial hunting authorization" means a document issued by the division authorizing the holder to obtain and use specified hunting licenses and permits without having completed an approved hunter education course, subject to the qualifications, requirements and limitations set forth in this rule.
 - (g) "Written consent" means a written or typed document containing the:
 - (i) full name, date of birth, and home address of the trial hunter;
 - (ii) full name, home address, and phone number of the supervising hunter;
 - (iii) nature of the planned hunting activity and the general area where it will occur;
 - (iv) parent or legal guardian's consent for the:
 - (A) trial hunter to participate in the described hunting activity; and
 - (B) supervising hunter to transport and accompany the trial hunter in the activity; and
 - (v) name, signature, and phone number of the authorizing parent or legal guardian.

R657-68-3. Obtaining a Trial Hunting Authorization.

- (1) Upon application, the division may issue a trial hunting authorization to a resident or nonresident who:
 - (a) is 11 years of age or older at the time of application;
 - (b) is eligible under state and federal law to possess a firearm, muzzleloader, bow and arrow, or crossbow;
 - (c) is born after December 31, 1965 and has not completed an approved hunter education course; and
 - (d) successfully completes an abbreviated online course on trial hunting program requirements and hunting ethics and safety.
- (2) The division may charge a handling fee for a trial hunting authorization.

R657-68-4. Effect and Term of a Trial Hunting Authorization.

- (1)(a) A person who obtains a trial hunting authorization will receive an accompanying registration number to be used in lieu of a hunter education number when applying for or purchasing a hunting license or permit authorized in Subsection (b).
- (b) A person who possesses a trial hunting authorization may

apply for and purchase the following Utah hunting licenses and permits, notwithstanding the hunter education requirements in Section 23-19-11 and R657-23:

- (i) hunting license, excluding multi-year licenses;
- (ii) combination license, excluding multi-year licenses;
- (iii) all hunting permits, excluding the following big game permits allocated through a division drawing:
 - (A) premium limited entry;
 - (B) limited entry;
 - (C) once-in-a-lifetime;
 - (D) cooperative wildlife management unit;
 - (E) dedicated hunter; and
 - (F) sportsman.
- (2)(a) A trial hunting authorization:
 - (i) is valid for a single, three year term, except as provided in Subsection (6); and
 - (ii) shall immediately terminate upon the holder successfully completing an approved hunter education course, as provided in Section 23-19-11 and R657-23.
- (b) A person may not obtain more than one trial hunting authorization in a lifetime.
- (3) A trial hunting authorization shall be considered an "approved hunter education course" under Section 23-17-6(3)(a)(ii) for the exclusive and limited purpose of hunting on a commercial hunting area.
 - (a) A person who hunts on a commercial hunting area with a trial hunting authorization is subject to the requirements in R657-68-5.
 - (4)(a) A person who possesses a current trial hunting authorization may not participate in the Hunter Mentoring Program (R657-67) as a hunting mentor.
 - (b) A person who possesses a current trial hunting authorization may participate in the Hunter Mentoring Program (R657-67) as a qualifying minor, as hereafter provided.
 - (i) A trial hunting authorization will be recognized by the division as a "hunter education program" under R657-67-3(1)(b) for the exclusive and limited purpose of a qualifying minor participating in the Hunter Mentoring Program.
 - (ii) Notwithstanding the big game permit limitations in Subsection R657-68-4(1)(b)(iii), a qualifying minor possessing a current trial hunting authorization may share any big game permit authorized in the Hunter Mentoring Program rule.
 - (iii) Both the qualifying minor and hunting mentor are subject to the provisions of this rule and the Hunter Mentoring Program rule when a hunting permit is shared under R657-67-3 with a qualifying minor possessing a current trial hunting authorization.
 - (5) A person that applies for a big game hunting permit with a trial hunting authorization is subject to the minimum age requirements set forth in Section 23-19-22.
 - (6)(a) A trial hunting authorization that expires after a hunting permit application is filed in a division drawing shall remain valid to the date the permit is issued for the exclusive purpose of receiving and using the permit.
 - (i) A trial hunting authorization extended under Subsection (6)(a) beyond the prescribed three year term may not be used during the extension period to obtain any other hunting license or permit.
 - (b) A person that obtains a license or permit with a valid trial hunting authorization that thereafter expires prior to the conclusion of the hunting season assigned to that license or permit may use the license or permit through the entire season, subject to the limitations and conditions set forth in R657-68-5.
 - (c) A person that successfully completes an approved hunter education course prior to using a hunting license or permit obtained with a trial hunting authorization is not subject to the limitations and conditions set forth in R657-68-5, provided proof of hunter education compliance is carried on the person while hunting.

R657-68-5. Using a Hunting License or Permit Obtained with a Trial Hunting Authorization.

(1) A person that obtains a hunting license or permit with a trial hunting authorization issued under R657-68-3 may use the license or permit, provided they are:

- (a) 12 years of age or older; and
- (b) accompanied, as defined in Section 23-20-20(1), in the field at all times while hunting by a resident or nonresident, supervising hunter who:
 - (i) is 21 years of age or older;
 - (ii) is eligible under state and federal law to possess a firearm and archery equipment;
 - (iii) possesses a current Utah hunting or combination license;
 - (iv) has satisfied applicable hunter education requirements under Section 23-19-11; and
 - (v) obtains the written consent of the parent or legal guardian when accompanying a trial hunter that is under 18 years of age.

R657-68-6. Supervising Hunter Responsibilities.

- (1) A supervising hunter that escorts a trial hunter under R657-68-5(1)(b) shall:
- (a) accompany, as defined in Section 23-20-20(1), the trial hunter at all times in the field while hunting;
 - (b) not accompany more than two trial hunters in the field at any point in time;
 - (c) provide the trial hunter direct supervision and instruction on hunting regulations, ethics and safety; and
 - (d) possess on their person a valid Utah hunting or combination license issued in their name; and
 - (e) possess the written consent of the parent or legal guardian when accompanying a trial hunter under 18 years of age.

R657-68-7. Violation and Discipline.

- (1)(a) A trial hunter may not take protected wildlife under authority of a license or permit obtained with a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).
- (b) A person may not take game birds on a commercial hunting area under authority of a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).
- (2) The division may refuse to issue a trial hunting authorization to a person that:
- (a) fails to satisfy the eligibility criteria in R657-68-3 or R657-68-5(1)(a);
 - (b) provides false or misleading information in the application for a trial hunting authorization; or
 - (c) has engaged in conduct that results in a conviction, no contest plea, plea held in abeyance, or diversion agreement to a:
 - (i) violation of the Wildlife Resources Code, or the rules and guidebooks of the Wildlife Board; or
 - (ii) crime that when considered with the privileges granted in a trial hunting authorization bears a reasonable relationship to the person's ability or willingness to safely and responsibly participate in the program.
- (3) A hunting license or permit is invalid when obtained with a trial hunting authorization that is acquired by fraud, deceit, or misrepresentation.

KEY: wildlife, game laws, hunter education

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23-14-18

23-14-19

23-19-14.6

R714. Public Safety, Highway Patrol.**R714-500. Chemical Analysis Standards and Training.****R714-500-1. Authority.**

A. This rule is authorized by Section 41-6a-515 which requires the Commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

R714-500-2. Definitions.

A. Certification Report means document prepared by a technician detailing the results of a certification check.

B. Certification Check means analysis of instrument function and calibration performed by technician.

C. Instrument means breath alcohol concentration testing instruments employed by law enforcement officers for evidentiary purposes and approved by the department.

D. Operator means individual certified by the department to administer breath alcohol concentration tests.

E. Breath Alcohol Concentration Test Results means analytical results of a breath alcohol concentration test provided by an approved instrument. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

F. Program means all breath alcohol concentration testing techniques, methods, and programs.

G. Program Supervisor means authorized representative of the Commissioner of Public Safety for the breath alcohol concentration testing program and supervisor of said program.

H. Technician means individual certified by the department to operate, provide training on, and perform maintenance, repairs, and certification checks on breath alcohol concentration testing instruments.

I. Breath Test means test administered by an operator or technician on an instrument for the purpose of determining breath alcohol concentration.

J. Department means the Utah Department of Public Safety.

R714-500-3. Purpose.

A. It is the purpose of this rule to set forth:

- (1) Procedures whereby the department may certify:
 - (a) breath alcohol concentration testing programs;
 - (b) breath alcohol concentration testing instruments;
 - (c) breath alcohol concentration analytical results.
 - (d) breath alcohol concentration testing operators;
 - (e) breath alcohol concentration testing technicians; and
 - (f) breath alcohol concentration testing program supervisors.
- (2) Adjudicative procedure concerning:
 - (a) application for and denial, suspension or revocation of the aforementioned certifications; and
 - (b) appeal of initial department action concerning the aforementioned certifications.

R714-500-4. Application for Certification.

A. Application for certification shall be on forms provided by the department in accordance with Subsection 63G-4-201(3)(c).

R714-500-5. Program Certification.

A. All programs must be certified by the department.

B. Prior to initiating a program, an agency or laboratory shall submit application to the Department for certification. The application shall show the brand or model, or both, of the instrument to be used and contain a resume of the program followed. The Department shall inspect to determine compliance with all applicable provisions under R714-500.

C. Certification of a program may be denied, suspended, or revoked by the Department if, based on information obtained by the Department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the department.

R714-500-6. Instrument Certification.

A. Criteria: To be approved, each manufacturer's brand or model of instrument shall meet the following criteria:

1. The instrument shall provide accurate and consistent analysis of breath specimen for the determination of breath alcohol concentration for law enforcement purposes;

2. Breath alcohol concentration analysis of an instrument shall be based on the principle of infra-red energy absorption or any other similarly effective procedure as specified by the Department;

3. Breath specimen analyzed shall be essentially alveolar or end expiratory in composition according to the analysis method utilized;

4. Measurement of breath alcohol concentration shall be reported in grams of alcohol per 210 liters of breath;

5. The instrument shall analyze a reference sample during certification checks, following procedures outlined in R714-500-6-D;

6. Other criteria, deemed necessary by the Department, may be required to correctly and adequately evaluate the instrument as practical and reliable for law enforcement purposes.

B. Acceptance: The Department shall approve all breath alcohol concentration testing instruments employed for law enforcement evidentiary purposes.

1. The Department shall maintain an approved list of accepted instruments. Law enforcement entities shall select instruments from this list, which list shall be available for public inspection upon request from the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

2. A manufacturer may apply for approval of an instrument by brand or model not on the list. The Department shall subsequently examine each instrument to determine if it meets criteria specified by R714-500 and applicable purchase requisitions.

3. Upon compliance with R714-500, an instrument may be approved by brand or model and placed on the list of accepted instruments.

4. Certification Reports verifying the certification of all instruments shall be kept on file by the program supervisor and made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

C. Initial Instrument Certification: All breath alcohol concentration testing instruments used for law enforcement evidentiary purposes shall be certified prior to being placed into service.

1. The program supervisor shall determine that each individual instrument, by serial number, conforms to the brand or model that appears on the Commissioner's accepted list.

2. Prior to an instrument being placed into service, a technician shall perform a certification check, following the standardized operating procedure and requirements outlined in R714-500-6-D.

3. Upon successful completion of these requirements, the instrument shall be deemed to be operating correctly and may be placed into service.

D. Regular Instrument Certification Checks

1. Once an instrument has been placed into service, it shall be certified by a technician on a routine basis, not to exceed 40 days between certification checks.

2. The program supervisor shall establish a standardized operating procedure for performing certification checks, following requirements set forth in R714-500 or by using such procedures as recommended by the manufacturer of the instrument to meet its performance specifications, as derived from:

- a. electrical power check;
- b. operating temperature check;
- c. internal purge check;
- d. invalid test procedures check;
- e. diagnostic measurements check;
- f. internal calibration check;
- g. known reference sample check; and

h. measurements of breath alcohol concentration, displayed in grams of alcohol per 210 liters of breath.

A copy of these standard operating procedures may be made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

3. For known reference sample checks set forth in R714-500-6-D-2-g, the instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight or volume of ethanol held at a constant temperature or a compressed inert gas and alcohol mixture from a pressurized cylinder.

a. The result of the analysis shall agree with the reference sample's predicted value, within parameters of calibration set at plus or minus 5% or 0.005, whichever is greater, or such limits as set by the Department.

i. For example, if a known reference sample has a value of 0.100, the parameters of calibration set at plus or minus 5% would equal 0.005 ($0.100 \times 5\% = 0.005$). Acceptable parameters of calibration using a known 0.100 reference sample would therefore range from 0.095 to 0.105.

b. Analytical results of the known reference sample check shall be reported to three decimal places.

1. Other checks, deemed necessary by the Department or program supervisor, may be required to correctly and adequately evaluate the instrument.

2. Technicians shall follow the standardized operating procedure as set forth by the program supervisor when performing certification checks.

3. If an instrument successfully passes all the certification checks, it shall be deemed to be operating properly.

4. A report of the certification results with the serial number of the certified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

5. Results of certification checks shall be kept in a permanent record retained by the technician or program supervisor.

E. Instrument Repair and Recertification

1. The Department may at any time determine if a specific instrument is unreliable or unserviceable. Upon such a finding, the instrument shall be removed from service and certification withdrawn.

2. A report of the certification results showing the certification has been withdrawn shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

3. Upon proper repair, the instrument may be recertified and again placed into service.

a. Minimum requirements for recertification are identical to those outlined in R714-500-6-D, sub-sections 2, 3, and 4.

4. A report of the certification results with the serial number of the recertified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

R714-500-7. Breath Alcohol Concentration Test Analytical Results.

A. The instrument should be operated by either a certified operator or technician.

B. Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.

1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.

2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.

a. For example, a result of 0.237g/210L shall be reported as 0.237.

C. Results of breath alcohol concentration tests will be printed

by the instrument.

D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.

F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

R714-500-8. Operator Certification.

A. All breath alcohol testing operators must be certified by the Department.

B. All training for initial and renewal certification will be conducted by a program supervisor or technician.

C. Initial Certification

(1) In order to be certified as a breath alcohol concentration testing instrument operator, an individual must successfully complete a course of instruction approved by the Department, which must consist of eight hours of training, including as a minimum the following:

a. Effects of alcohol in the human body;
b. Operational principles of breath testing;
c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
d. Legal aspects of chemical testing, DUI case law, and other alcohol related laws;

e. Laboratory participation performing simulated tests on the instruments, including demonstrations under the supervision of a class instructor; and

f. Examination and critique of course.

(2) After successful completion of the initial certification course a certificate will be issued that will be valid for three years.

D. Renewal Certification

(1) An operator seeking to renew his or her certification shall successfully complete the recertification exam prior to the expiration date of the certificate.

(2) The Department shall renew an operator's certificate for a three-year period after he or she successfully completes the recertification examination.

(3) Any operator whose certification expires shall retake and successfully complete the recertification course in order to renew his or her certification.

Four hours of training, including the following topics:

a. Effects of alcohol in the human body;
b. Operational principles of breath testing;
c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
d. Legal aspects of chemical testing DUI case law, and other alcohol related laws; and

e. Successful completion of the recertification examination.

R714-500-9. Technician Certification.

A. All technicians, must be certified by the department.

B. The minimum qualifications for certification as a technician are:

(1) Satisfactory completion of the operator's initial certification course and/or renewal certification course;

(2) Satisfactory completion of the Breath Alcohol Testing Supervisor's course offered by Indiana University or an equivalent course of instruction, as approved by the program supervisor;

(3) Satisfactory completion of the manufacturer's maintenance and repair technician course;

(4) Maintenance of technician's status through a minimum of eight hours training each calendar year. This training must be directly related to the breath alcohol testing program and must be approved by the program supervisor.

C. Any technician who fails to meet the requirements of R714-500-9-B and allows their certification to expire for more than one year, must renew their certification by meeting the minimum

requirements as outlined in R714-500-9-B.

D. Only certified breath alcohol testing technicians shall be authorized to provide expert testimony concerning the certification and all other aspects of the breath testing instrument under their supervision.

R714-500-10. Program Supervisor Certification.

The program supervisor will be required to meet the minimum certification standards set forth in R714-500-9. Certification should be within one year after initial appointment or other time as stated by the department.

R714-500-11. Previously Certified Personnel.

A. This rule shall not be construed as invalidating the certification of personnel previously certified as operators under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements as outlined in R714-500-8.

B. This rule shall not be construed as invalidating the certification of personnel previously certified as a technician under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements in R714-500-8.

R714-500-12. Revocation or Suspension of Certification.

A. The department may, on the recommendation of the program supervisor, revoke or suspend the certification of any operator or technician:

- (1) Who fails to comply with or meet any of the criteria required in this rule; or
- (2) Who falsely or deceitfully obtained certification; or
- (3) Who fails to show proficiency in proper operation of the breath testing instrument; or
- (4) For other good cause.

R714-500-13. Adjudicative Proceedings.

A. Purpose of section. It is the purpose of this section to set forth adjudicative proceedings in compliance with Title 63G Chapter 4.

B. Designation. All adjudicative proceedings performed by the department shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

C. Denial, suspension or revocation. A party who is denied certification or whose certification is suspended or revoked, will be informed within a period of 30 days by the department the reasons for denial, suspension, or revocation.

D. Appeal of denial, suspension, or revocation. A party who is denied certification or whose certification is suspended or revoked may appeal to the commissioner or designee on a form provided by the department in accordance with Subsection 63G-4-201(3)(C). The appeal must be filed within ten days after receiving notice of the department action.

E. No hearing will be granted to the party. The commissioner or designee will merely review the appeal and issue a written decision to the party within ten days after receiving the appeal.

KEY: alcohol, intoxilyzer, breath testing, operator certification
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R746. Public Service Commission, Administration.**R746-401. Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets.****R746-401-1. Applicability.**

A. These rules shall apply to each gas corporation, electrical corporation, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer, except independent energy producers exempt under Section 54-2-1, operating as a public utility in Utah under the jurisdiction of the Public Service Commission of Utah.

B. These rules shall not be applicable to the repair or replacement of existing utility assets, except as noted in Section R746-401-3.A.3.a.

C. Transactions shall not be artificially divided to avoid these reporting requirements.

D. These rules shall not limit the Commission's jurisdiction to review, at the Commission's discretion, transactions not specifically covered by these rules.

E. A utility may apply to the Commission for the modification of these rules or for temporary or permanent exemption from their requirements if unreasonable hardship results from their application.

R746-401-2. Definitions.

A. For purposes of these rules:

1. "Commission" shall mean the Public Service Commission of Utah.

2. "Gross investment in utility plant devoted to Utah service" shall mean the Utah allocated portion of the total of the following types of accounts: Plant in service, property under capital leases, plant bought or sold, completed construction not classified, and experimental plant unclassified. The following types of accounts shall not be included: Plant leased to others, property held for future use, construction work in progress, and acquisition adjustments.

3. "Book cost" shall mean the amount at which an asset is recorded in the books of the utility without deduction for accrued depreciation, depletion, amortization, etc.

B. For purposes of these rules, public utilities are divided into the following categories:

1. Large utilities - a public utility serving an annual average of 20,000 or more customers or access lines in Utah as set forth in its most recent annual report on file with the Commission and wholesale electrical cooperatives.

2. Small utilities - a public utility serving less than an annual average of 20,000 customers or access lines in Utah as set forth in its most recent annual report on file with the Commission.

R746-401-3. Reporting Requirements.

A. Each public utility shall file a report with the Commission, at least 30 days before beginning construction, by the utility or contracted by the utility, or before the purchase or acquisition of the following utility assets and any other utility plant devoted to Utah service, the cost of which is in excess of the lesser of \$10,000,000 or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission:

1. gas corporations --
a. any manufactured gas production facility, or liquids separation or sweetening plant facility, or gas reinjection plant facility.

b. any natural gas storage reservoir or liquified natural gas storage facility.

c. any natural gas transmission pipeline the size of which is:
i. large utilities - eight inches or greater in diameter and 20 miles or more in length

ii. small utilities - four inches or greater in diameter and ten miles or more in length

2. electrical corporations, wholesale electrical cooperatives and independent energy producers --

a. any coal mine, uranium mine, geothermal well or other fuel source development

b. any electrical generating facility of ten megawatts or greater

c. any electrical transmission line ten miles or more in length and the design voltage of which is:

i. large utilities - 138 kilovolts or greater

ii. small utilities - 69 kilovolts or greater

3. telephone and telegraph corporations --

a. any new central office or complete replacement of an existing central office in Utah the size of which is:

i. large utilities - 5,000 or more access lines in service

ii. small utilities - 500 or more access lines in service

4. water corporations --

a. any water well or spring development

b. any water storage reservoir

c. any water transmission pipeline one mile or more in length

5. sewerage corporations --

a. any sewer treatment facility

b. any sewer transmission pipeline one mile or more in length

6. heat corporations --

a. any heat production facility

b. any heat transmission pipeline one-quarter mile or more in length

B. Each public utility shall file with the Commission, at least 30 days before its being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

C. Each public utility shall file with the Commission, at least 30 days before being placed into effect, a report of the construction, purchase, acquisition, sale, transfer or other disposition by that utility of nonutility assets having a book cost in excess of the lesser of twenty million dollars or ten percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

D. The utility shall file with the Commission an original and 12 copies of the report on each transaction described in the foregoing sections.

E. The report of each transaction shall contain, at least, the following information:

1. The utility's name and address, and a brief description of the utility's service territory;

2. Description of the subject transaction, the purposes and reasons for the transaction, and the location and purposes of the subject assets;

3. Information to show that the utility has or will get any required consent, franchise or permit from the proper county, city, or other public authority and any other necessary authorizations from the appropriate governmental bodies;

4. Dates assets are to be constructed, bought or otherwise acquired, or sold, transferred or otherwise disposed of;

5. Estimated construction cost of the assets or book cost and accumulated depreciation, depletion or amortization of assets acquired, sold, transferred or disposed of;

6. Information to show that any proposed line, plant or system will not conflict with or adversely affect the operations of any existing certificated public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to any existing public utility which supplies the same product or service to the public;

7. Financial statements of the utility demonstrating adequate financial capacity to support the construction or acquisition of the proposed assets, and information concerning any proposed financing arrangements necessary to finance the proposed assets;

8. Estimated effect of the transaction on current utility rates and charges; and

9. Other information as the Commission may require.

F. Any report filed with the Commission shall be updated or supplemented if there are significant changes in the subject transaction.

R746-401-4. Commission Action.

Reserved.

KEY: public utilities, rules and procedures, contracts

1989

54-4-1

Notice of Continuation August 7, 2019

54-4-7

R746. Public Service Commission, Administration.
R746-460. Rules Governing Customer Information and Marketing for Large-Scale Electric and Gas Utilities.
R746-460-1. General Provisions.

(1) Purpose -- The purpose of these rules is to establish and enforce certain uniform practices governing:

(a) the sharing of Utility Customer Information or Customer Usage Data by Large-Scale Utilities with utility affiliates or third parties; and

(b) marketing to Large-Scale Utility customers whose information has been shared, when marketing materials use a name or logo that is substantially similar to that of a Large-Scale Utility.

(2) Scope -- These rules shall apply to Large-Scale Utilities that are subject to the regulatory authority of the Commission.

R746-460-2. Definitions.

(1) "Express Consent" means consent that is provided orally or in writing (including via electronic communication), by the consenting customer after having received notification that the utility proposes to share Utility Customer Information with an affiliate, licensee, or third party:

(a) explaining that the customer need not consent to the release of information in order to obtain utility service;

(b) explaining that the customer may subsequently opt out of such sharing of information in the future by contacting the utility; and

(c) providing clear instructions explaining how a customer may subsequently opt out of such sharing of information in the future.

(2) "Large-Scale Electric Utility" has the meaning set forth in Section 54-2-1.

(3) "Large-Scale Gas Utility" means a public utility that provides retail natural gas service to more than 200,000 retail customers in the state.

(4) "Large-Scale Utility" means a Large-Scale Electric Utility or a Large-Scale Gas Utility.

(5) "Utility Customer Information" means a Large-Scale Utility customer's name, address, telephone number, email address, or utility account number, or any combination thereof.

(6) "Customer Usage Data" means an individual utility customer's billing, consumption data, or participation in any specific utility program.

(7) "Small Business and Residential Customers" means

(a) for a Large-Scale Electric Utility, all customers taking service under a residential rate class and any nonresidential customers whose loads have not registered 1,000 kW or greater more than once in the preceding 18-month period; and

(b) for a Large-Scale Gas Utility, all customers within the GS rate classification, or, if there is no such rate classification, all customers whose usage does not exceed 1,250 dekatherms in any one day during the winter season.

R746-460-3. Utility Customer Information and Customer Usage Data.

(1) Permitted Sharing -- Utility Purposes. Large-Scale Utilities may share Utility Customer Information or Customer Usage Data with affiliates, contractors and subcontractors, or other third parties without the customer's consent or permission, in any of the following circumstances:

(a) for use in activities necessary for providing tariff-based services or programs;

(b) as necessary for the operation and maintenance of the Large-Scale Utility's facilities and utility system including but not limited to physical facilities used for energy distribution;

(c) in relation to the utility's conduct of its core utility function or to maintain safe and reliable utility service to customers;

(d) to comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction;

(e) for use in a formal proceeding before the Commission

including but not limited to general rate cases, customer complaints, or tariff change proceedings;

(f) to assist emergency responders and law enforcement in situations of threat to life or property; or

(g) with the prior approval of the Commission.

(2) Sharing with Third Parties.

(a) Except as provided in Subsection R746-460-3(1), a Large-Scale Utility may share its Utility Customer Information or Customer Usage Data only if the customer provides Express Consent for such sharing to the Large-Scale Utility, its affiliates, or a third party who is seeking such information.

(b) The Large-Scale Utility must retain the following information for each instance of a customer's Express Consent for disclosure of its Utility Customer Information or Customer Usage Data:

(i) the confirmation of consent for the disclosure of private customer information;

(ii) a list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of its Utility Customer Information or Customer Usage Data; and

(iii) confirmation that the customer's name and service address exactly match the utility's record for such account.

(3) Confidentiality.

(a) A Large-Scale Utility that shares Utility Customer Information or Customer Usage Data pursuant to Subsections R746-460-3(1)(a) through (c) or Subsection R746-460-3(2), may do so only subject to contractual provisions requiring the receiving party (and any of the contractors and subcontractors that the third party has retained to facilitate the marketing efforts) to maintain the Utility Customer Information or Customer Usage Data as confidential and prohibiting further sharing. A Large-Scale Utility that shares Utility Customer Information or Customer Usage Data as part of a Commission proceeding, must identify the information as Confidential Information pursuant to Sections R746-1-601 through R746-1-603.

(b) Notwithstanding the requirements under this rule, a receiving party may share Utility Customer Information, subject to any available confidential protections, shared under Section R746-460-3 in order to:

(i) comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction; or

(ii) assist emergency responders and law enforcement in situations of threat to life or property.

(4) Customer Usage Data. Except as otherwise expressly stated herein, Large-Scale Utilities may disclose Customer Usage Data without Express Consent or need to protect the information as confidential when disclosure of multiple customers' data is provided in aggregate form such that the aggregated information does not allow any specific customer to be identified. Nothing in this rule shall prevent Large-Scale Utilities from using and disclosing usage information that does not constitute Customer Usage Data.

R746-460-4. Marketing to Utility Customers.

(1) If an affiliate or licensee of a Large-Scale Utility, or a licensee of a Large-Scale Utility's affiliate, engages in unsolicited marketing of products or services directed to a Large-Scale Utility's customers in Utah using a logo or name brand that is substantially similar to that of the Large-Scale Utility, any written marketing materials shall be drafted to avoid customer confusion about the licensee or affiliate relationship, and, with respect to Small Business and Residential Customers, shall also include a clear and prominent statement that:

(a) the product or service is not being offered by the Large-Scale Utility;

(b) the entity offering the product or service is separate from the Large-Scale Utility; and

(c) the decision to purchase or not purchase the product or service will not impact Large-Scale Utility service.

(2) If a Large-Scale Utility's licensee, affiliate, or affiliate's licensee fails to comply with Subsections R746-460-4(1)(a) through (c), the Large-Scale Utility will be subject to a penalty pursuant to Section 54-7-25.

(3) If written marketing materials contain the information set forth in Subsections R746-460-4(1)(a) through (c), then the Large-Scale Utility is deemed to have complied with these rules and is not subject to any penalty under this section.

(4) A Large-Scale Utility, its affiliate(s), or its affiliate(s)' licensees may utilize a logo or name brand that is substantially similar to that of the Large-Scale Utility without disclosures set forth in Subsection R746-460-4(1) for:

(a) tariff-based services or programs and programs related to the Large-Scale Utility's core utility business, including but not limited to billing services tariffs;

(b) charitable contributions or event sponsorships; and

(c) marketing relating to the Large-Scale Utility's own programs.

KEY: public utilities, electric and gas utility customer information, utility regulation, marketing to utility customers
August 7, 2019

54-4-1

54-3-1

54-3-7

R746. Public Service Commission, Administration.
R746-700. Complete Filings for General Rate Case and Major Plant Addition Applications.

R746-700-1. General Provisions Applicable to All 7XX Series Rules.

This rule provides provisions for complete filings for general rate case and alternative cost recovery for major plant addition applications and other 7XX series rules, meaning R746-700-1 through and including R746-700-51.

A. Purpose. The 7XX series rules apply to an application for a general rate case filed by a public utility for an increase or decrease in base rates pursuant to 54-7-12 and an application for alternative cost recovery for a major plant addition filed by an electrical corporation or gas corporation public utility for cost recovery of a major plant addition pursuant to 54-7-13.4.

B. A public utility anticipating to file a general rate case or major plant addition application shall file with the Commission a non-binding notification of its intent to file such application at least 30 days prior to the anticipated filing date of the application. The notification shall be served on all parties that participated in the public utility's last prior general rate case or major plant addition proceeding respectively. The Commission may grant an exception or modification to this notification requirement based on a showing of good cause by the public utility.

C. Minimum filing requirements for a complete filing. Sections 700-10, 700-20, 700-21, 700-22, 700-23, 700-30, 700-40, 700-41, 700-50, and 700-51 set forth the information which must be contained in an application, testimony, exhibits, evidence, data, and any other informational documents filed with an application for the application to be considered a complete filing pursuant to 54-7-12(2) or 54-7-13.4(2).

D. Paper and Electronic media documents.

1. All documents filed with the Commission shall conform to the requirements of Subsection R746-1, Public Service Commission Administrative Procedures Act Rule.

2. A proceeding participant is encouraged to provide voluminous material to other participants in a proceeding in an electronic media version. Unless a participant in a Commission proceeding notifies the Commission and other proceeding participants that it is unable or unwilling to receive documents in electronic media, provision of documents to a participant need only be in electronic media.

3. An applicant shall provide electronic media versions of its application and additional information and documents to be provided pursuant to any series 7XX rule to the Division of Public Utilities and the Office of Consumer Services, other parties granted intervention in the utility's last prior application proceeding, and any other person that has petitioned for intervention in the proceeding. An applicant need not provide these documents to a person whose intervention it opposes unless and until the person is granted intervention by the Commission. Notwithstanding the foregoing, the applicant shall provide a reasonable number of paper copies of the documents to the Division of Public Utilities and the Office of Consumer Services upon request.

E. Format, detail, etc. of documents, information, data, etc., indication of non-existence of information or unavailability of information of the type, detail or format described in a rule provision in the public utility's normal course of business and accounting, and confidential and privileged documents or information.

1. The format, detail, etc. of documents, data, information, etc. provided pursuant to any 7XX series rule shall be in the same format, detail, etc. as provided in the public utility's last prior proceeding or as otherwise directed by the Commission in or subsequent to the last prior proceeding. If a document, spreadsheet, schedule, etc. has internal formulas or other types of inter-cell relationships, the electronic media version shall be provided with such formulas or cell relationships intact.

2. If any series 7XX rule requires particular documents, data,

information, etc. to be produced and the documents, data, information, etc. do not exist, the proceeding participant shall specifically so indicate. If any 7XX series rule requires information to be produced of a certain type or in a certain detail, format, etc. which is not so maintained in the normal course of business and accounting, the participant will so indicate and identify and provide what information does exist as maintained by the participant.

3. Information claimed to be confidential that would fall within any 7XX series rule that is filed or provided by a proceeding participant in connection with an application shall be filed or provided under the terms of R746-1-601 through 605 or any applicable protective order. If a proceeding participant believes a document, data, information, etc. would fall within any 7XX series rule but claims a privilege affects its production, in lieu of providing the document, data, information, etc., the participant shall provide a description of the document, data, information, etc. and explain the privilege's application to the document, data, information, etc.

R746-700-10. Test Period Information to Be Included With a General Rate Case Application.

A. Cases where the test period is first identified in the application.

1. The applicant will provide information which will demonstrate what adjustments are required to be made to the 12 months of actual, unadjusted results of operations data, including all regulated costs and revenues, contained in the most recent periodic reported results of operations submitted to the Commission, to arrive at the test period used by the applicant in its application, on both a Utah jurisdiction and total company basis. If the public utility does not submit periodic reported results of operations to the Commission, the applicant shall use the public utility's most recently audited 12-month period in lieu thereof as the base period upon which the test period used in the application is developed.

a. Adjustments to be demonstrated include, but are not limited to: normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application, and all further adjustments to arrive at the test period used by the applicant in the general rate case filing.

b. The applicant will provide information explaining why the test period used is the most appropriate for the case.

c. In addition to the information relating to each adjustment identified in compliance with R746-700-10.A1.a, the applicant will also provide a summary index which identifies each adjustment or portion of an adjustment made in the filing material which can be used to locate where each adjustment or portion thereof is addressed, treated, applied, etc. in the application, testimony, exhibits and other documentation submitted. The summary index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

2. If the test period used in the application is a future test period, in addition to the demonstration of adjustments to be made for the test period used by the applicant in the general rate case application, the applicant will make the same demonstration for the 12-month period ending on the last day of June or December, whichever is closest, following the filing date of the application if this alternative period does not have an end date beyond the test period used in the general rate case application.

B. Cases where the test period is identified and approved prior to the filing of an application.

1. An applicant planning to file an application may first request Commission approval of a test period to be used prior to filing an application. The request to approve the proposed test period shall be accompanied by testimony and exhibits providing information supporting the proposed test period.

2. Subsequent to the Commission's approval of a test period, the applicant may then submit an application, using as the test

period for the case the test period previously approved by the Commission and need not provide the alternative test period demonstration required by R746-700-10.A.2.

R746-700-20. Information For a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using the allocation methods used in the public utility's last general rate case proceeding or any allocation method subsequently approved by the Commission. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-20 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. Historical results of operations information:

1. actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period as contained in its last periodic reported results of operations filing submitted to the Commission.

2. adjusted results of operations for the same period.

3. a description of any significant changes in accounting policies for the 24-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a forecasted test period is used, any future significant changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

B. If a non-forecasted test period is used in the application, the applicant shall provide information identifying and supporting each and every modification to the historical results of operations to arrive at the non-forecasted test period used in the general rate case application.

C. If a fully or partially forecasted test period is used in the application, which forecasted test period was not previously approved by the Commission for the general rate case application, the following forecasted test period information shall be provided (the format of the forecasted test period data shall be comparable to the historical results of operation information):

1. Revenues, with details supporting the test period revenues including (as applicable):

a. Usage, per customer by customer class

b. Demand and energy usage

c. Assumptions used in the development of the revenue forecasts

d. Billing determinants, by customer class, used to calculate the forecast test period revenues.

e. Charges, fees, and rates used in the forecast development

f. Contract changes or other specific changes anticipated in the forecast.

2. Operating Costs, using the same cost categories as used in the base period used for compliance with R746-700-10.A, with details supporting the test period operating cost information, including:

a. Forecasted costs relying on escalators or drivers will include the details of the base costs and the key drivers that impact the forecasted amount. If forecasted costs are not based on historical levels that have been inflated or escalated, the applicant shall provide supporting documents in the most detailed level available.

b. The information will identify the index or rate of inflation applied to accounts, budget items or specific cost components that result in adjusted costs in the forecasted test period. Source documents supporting the index or rate of inflation applied will be identified and will be provided or made available.

3. Labor Costs shall be identified separately. The applicant

will provide:

a. The actual most recent number of full-time equivalent employees and, separately, the forecasted number of full-time equivalent employees for the forecasted period. The most recent number of actual contract labor employees and the forecasted number of contract labor employees for the test period will also be provided as available and separately identified. The most recent number of actual union labor employees and the forecasted number of union labor employees for the test period will also be provided as available and separately identified.

b. The associated costs related to the full time equivalent labor and contract labor levels. Direct employees, contract employees, union and nonunion employees will each be provided separately.

c. Overtime costs, premiums, incentives, or other labor costs included in the forecast, with each provided separately. Union and nonunion costs shall be provided separately.

d. Any assumed salary and wage increases included in the projected labor costs will be identified. Any of the increases supported by a union contract will be so identified.

e. Pensions and benefits, overheads or other employee benefit costs that are included in the forecast period. Each of the separate employee benefit components will be separately identified (i.e., medical, dental, pensions, etc.) Any assumptions regarding projected increases in such costs caused by factors other than changes in full time employee levels will be identified and described, with supporting assumptions identified.

f. If projected increases in pension expense cause a material cost impact, at a minimum, the following information should be provided for one year prior to the historical period through the test period: service cost, interest cost, expected return on assets, net amortization and deferral, amortization of prior service cost, and total net periodic pension cost. The information shall also include for each of the 12-month periods the expected long-term rate of return on assets, discount rate, salary increase rate, amortization of transition asset or obligation, percent of pension cost capitalized, minimum required contribution per IRS, maximum allowable contribution per IRS, and actual (or projected) contribution made to the trust fund. Also included shall be the projected year-end balance at the end of each of the 12-month periods for accumulated benefit obligation, projected benefit obligation, fair value of plan assets, and market related value of assets.

4. Capital Expenditures or additions. The applicant will provide capital expenditures detail, and changes affecting rate base, including:

a. The detail for the changes, beginning with the start of the historic period results of operation through the test period. The detail will include dollar amounts and in-service dates.

b. The detailed calculation of depreciation expense and accumulated depreciation impacts as a result of the capital expenditures affecting rate base. For depreciation expense, the information will include the balances by plant account or function, depending on how the projection is done, to which the depreciation rates are being applied and the respective depreciation rates being used, by account or function, depending on how the projection is done.

c. Interdependencies of capital expenditures to operation and maintenance items will be identified.

d. A list will be provided of all major capital additions to rate base individually exceeding \$1,000,000 or 0.01% of total company net plant in service, whichever is greater for each year, beginning with the year prior to the historic periodic reported year through the test period. Projects under \$1,000,000 shall be grouped in aggregate utilizing the utility's usual plant categorizations. A brief description will be provided for each major capital addition in the list.

i. exceeding 0.1% of total company net plant in service or \$5,000,000, whichever is greater, for an electrical corporation, or

ii. exceeding 0.1% of total company net plant in service or \$1,000,000, whichever is greater, for a gas corporation.

- e. Detailed calculation of plant retirements.
- 5. Regulatory Adjustments. The applicant will provide details of all the regulatory adjustments required in the filing:
 - a. Information for recurring regulatory adjustments, such as amortizations, indicating compliance with past Commission orders for any item included in the filing.
 - b. Separately, a reversing adjustment and the reasons for non-inclusion or departure from a Commission ordered practice or adjustments if the applicant does not wish to have them apply to the application.
 - c. Unless already included in unadjusted results, regulatory adjustment information will include disallowances from prior orders, implementation of accounting orders approved by the Commission, or other adjustments necessary to make the forecasted test period data acceptable for ratemaking in Utah. Each of the regulatory adjustments will be supported by prefiled testimony or a detailed description contained within the schedules.
- 6. Other Rate Base. Details of other rate base accounts shall be provided by the applicant. For other items of rate base, such as deferred debits, accumulated deferred income taxes, materials and supplies, miscellaneous rate base, customer advances, deferred credits, etc., the applicant shall provide information showing the 12-month period of the historical results of operations, and any changes, both debits and credits, to those amounts through the test period resulting in the projected amount included in the filing. The information shall provide descriptions of any adjustments and modifications made to the historical period amounts and assumptions included in the projections. For any accounts in which no change from the historical level is proposed, a description of why the amount is not forecasted to change shall be included.
- 7. Taxes. Forecasting methods, calculations and key assumptions used to adjust historical tax information to projected costs and results will be provided on a tax item basis (i.e., income, FICA, property taxes, etc).

R746-700-21. Cost of Service and Rate Design Information for a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-21 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

- A. A Utah Class Cost of Service Study.
 - 1. A Utah Class Cost of Service Study based on the test period with supporting documentation including the development of allocation factors.
 - 2. If a new customer class is proposed, the applicant shall either:
 - a. include class cost of service studies; one which uses only existing customer classes and another with the newly proposed class included, or
 - b. explain why no cost of service study including the new customer class is included and how the new customer class is to be treated in setting rates in the case.
- B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.
- C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement. An exhibit will be provided showing the test period blocking based on adjusted actual and forecasted billing units in the development of the revenues for each rate schedule.

D. Its proposed tariff sheets for all tariff provisions for which it proposes changes.

- 1. An applicant need not include proposed tariff sheets for changes to tariff pages showing rates, charges, or fees if these proposed price changes are provided in a readily identifiable form elsewhere in the application.

R746-700-22. Additional Information for a General Rate Case Application Using a Forecasted Test Period Filed by an Electrical Corporation or a Gas Corporation.

If not already included with the application, pursuant to R746-700-20 or R746-700-21, an applicant shall also file with the Commission the following information or documents when filing a general rate case application which uses a forecasted test period. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-22 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation or gas corporations shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

A. Definitions. As used herein, the following terms shall have the indicated meanings:

1. Time Periods. Definitions of time periods for which information is to be provided in compliance with this rule are as follows:

a. Year: A 12-month period designated as "12 months ending Month Date, Year".

b. Base Year (BY): The 12-month historical period ending on the ending date for the most recent periodic reported results of operations filing submitted for the public utility, or if it does not file periodic results of operations, the base period upon which the test period used in the application is developed.

c. Test Period (TP): The 12-month period used as the test period for the general rate case application.

d. Historical Year(s) (HY): Year(s) immediately preceding the Base Year.

e. To Date: Up to the most recent date for which information is reasonably available to the public utility in preparing its general rate case application.

f. Workpapers: The documents and source material used to develop the inputs to the general rate case filing. The type, nature, level of detail, format, etc. of the information compilation, schedule, document, etc. shall be reasonably comparable to that provided to parties in the public utility's prior general rate cases.

2. Provide, Describe, etc. The terms "provide" or "describe," or terms with similar meaning, shall mean to deliver available electronic copies and/or paper copies of designated data and documents to interested persons; provided that, when necessary and appropriate, prompt arrangements may be made for review of designated data and documents at a utility location in Utah or at another mutually agreeable place. Spreadsheets and workpapers are to be provided in "live" electronic format (not PDF), i.e. models and spreadsheets are to be provided with formulas intact and input data available.

3. Materiality. Materiality is defined as a change in requested Utah jurisdictional revenue requirement equal to or greater than 0.1 % of total state revenue requirement or \$500,000, whichever is less.

4. Model(s). The term Model(s) shall mean the major analytical software tools and spreadsheets used by the utility to develop its general rate case application. Smaller analytical tools, such as special purpose electronic spreadsheets, are not included in the definition of the term Model(s) for purposes of this rule.

B. Revenue Requirement Information.

1. Forecasted test period data. A comparison of the Test

Period data Results of Operations (RO) to the Base Year actual, unadjusted RO and adjusted RO on both a jurisdictional and total company basis. This is to be made available in a side-by-side comparison on a consistent basis by FERC Account.

2. Operating and Capital Budgets. A comparison of the utility's operating budget and capital budget to the actual results for the Base Year, the prior Historical Year, and To Date on a total company basis. This comparison is to be at the most detailed level available and provide available explanation for material variances.

3. Labor Costs. A comparison of budgeted labor costs and number of full-time equivalents to the actual labor costs and full-time equivalents by year for the Base Year and the prior Historical Year on a total company basis. These shall show separately, to the degree available, the direct labor costs, premiums, incentives, benefits and overhead costs. These shall show contract labor costs separately from direct labor costs, and union labor costs separate from nonunion costs. The information shall provide available explanations for material variances.

4. Workpapers. The information shall provide the forecast workpapers (including assumptions, spreadsheets and tests).

5. Forecasted Data - Revenue Requirement.

a. Support and explanations for forecasted values, including Base Year starting values, adjustments made to the Base Year values and key drivers that impact the forecasts, together with supporting documents.

b. Indices, inflation rates and escalation factors used in preparing forecasts, including supporting source documents.

c. A revenue requirement workbook that tracks all input data beginning with the Base Year through the Test Period. This will provide summarized revenue requirement sections of the jurisdictional allocation model for the Base Year, the Test Period and any intervening year. The workbook and summaries are to include, inter alia, billing determinants, rate base and capital structure, including dollar capitalization, for the specified Years.

d. Complete net power cost calculations for any intervening year between the Base Year and Test Period.

6. Models. Workable versions of Models utilized in determining or projecting rate case values, with formulae intact and source data included, along with available instructions and write-ups regarding use of the Model and written descriptions of the Model and its inputs.

C. Cost of Service Information

1. Forecasted Data - Class Cost of Service. Class cost of service data on a Utah allocated basis under all approved jurisdictional allocation methods for the Base Year and Test Period.

2. Forecasted Data - Rate Design. Test Period rate design data on a Utah allocated basis under all approved jurisdictional allocation methods used for reporting purposes.

D. Miscellaneous Information

1. Accounting - Changes. A detailed description of Material changes in accounting policies or procedures adopted by the utility since the prior general rate case or as anticipated through the end of the Test Period. This will include a detailed description of the impact of change in accounting policy or procedure on the Test Period and identify the basis of the change.

2. Accounting - Write-offs. A detailed description of Material write-offs of assets and/or liabilities from the start of the Base Year - To Date that affect Utah revenue requirement. For each material write-off, the following will be provided:

- a. Copy of journal entry recording the write-off;
- b. Detailed description of the purpose of the write-off;
- c. Copies of studies, reports or analyses done in determining whether or not to write off the asset;
- d. Amount of the write-off and identification of the accounts charged on a total Company and a Utah jurisdictional basis; and
- e. Amount included in the projected Test Period for write-offs, if any, on a total Company and a Utah jurisdictional basis, by account.

3. Affiliates - Organizational Charts. For the Base Year and

Test Period and continuing To Date, the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status.

4. Affiliates. A detailed description of corporate restructurings and changes in affiliate relationships since the filing of the prior general rate case and also describe changes in the corporate and affiliate relationships between the Base Year and the end of the Test Period reflected in the filing.

5. Affiliates. A copy of Material new or Materially modified contracts or agreements entered into since the filing of the prior general rate case, including attachments thereto, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or costs allocated or directly charged to Utah regulated operations included in the general rate case application, between the utility and/or its parent company and affiliated companies for services and/or goods rendered between or among them. This is to include a list of active contracts unless already provided in the most recent Affiliate Interest Report.

6. Affiliates. A copy of cost allocation manuals and/or policies and procedures that set forth the detailed cost allocation methodology and/or pricing methodology used to charge costs between affiliates that have changed since the filing of the prior general rate case.

7. Audit - Financial. A copy of each adjusting journal entry made in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. Supporting documentation will be included. The information will also identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

8. Audit - Financial. A copy of management letters received from the utility's independent auditors or responses to those management letters for the Base Year, the prior Historical Year and the period To Date.

9. Audit - Financial Audit Workpapers. If access to audit workpapers is allowed by the utility's independent auditor, the utility will coordinate review of the financial audit workpapers for the most recent completed financial audit conducted by the utility's independent auditors at a mutually agreed upon location. If access to workpapers is not allowed by the independent auditor, the utility will coordinate the review of the most recent quarterly review conducted by the utility's independent external auditors prepared for the utility's board of directors.

10. Audits - Internal. A listing of internal audits conducted by or for the utility or its parent company for the Base Year, the prior Historical Year and To Date if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in the general rate case application. Notice of Internal Audit reports completed during the pendency of the case will be provided upon completion to all parties participating in the case.

11. Board of Directors - Meeting Minutes. The Board of Directors' meeting minutes for the Base Year, the prior Historical Year and To Date for the utility and the parent company if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in general rate case filings for the same period.

12. Budget. Complete copies of detailed annual operating and capital budgets for the Base Year through the end of the Test Period.

13. Budget. Copies of operating and capital budget instructions and directives provided to employees, including assumptions, directives, manuals, policies and procedures, timelines, and descriptions of budget procedures for the budget or forecast for the Test Period and To Date.

14. Budgets - Operating Plans. If available, copies of written

operating plans that describe the utility's goals and objectives for the Base Year through the end of the Test Period.

15. Budget - Variance. A complete copy of quantitative and narrative monthly, quarterly and annual comparisons of operating and capital budgets to actual expenditures for the Base Year, the prior Historical Year, and for the period from the Base Year To Date.

16. Cost of Capital - Debt Expense. The currently forecasted financings for the next three years.

17. Cost of Capital - Debt Expense. The monthly balance of short-term debt and monthly short-term debt cost rates, for the Base Year, the prior two Historical Years and To Date.

18. Cost of Capital. Copies of the most recent bond rating agencies reports on the Company.

19. Employee Costs. A breakdown of the total amount of gross payroll and employee benefit costs (by benefit type) for the Base Year, the prior Historical Year and through the end of the Test Period between amounts expensed and amounts capitalized and provide the percentage of payroll and employee benefits (by benefit type) charged to expense for each Year.

20. For the Base Year, the prior Historical Year, To Date and for the Test Period, the amount of overtime, the amount of premium pay, the amount of other salary/labor costs and the amount of incentive compensation in total and expensed for each.

21. Employee Costs. A list of compensation and benefit studies the utility has for the Base Year, the prior Historical Year and To Date and indicate which of the studies were used (if any) in projecting the compensation and employee benefit costs for the Test Period.

22. Employee Costs - Employee Levels. Describe, in detail, Material employee reductions, employee severance plans, or early retirement programs conducted or anticipated by the utility during the Base Year, the prior Historical Year, and To Date and as projected through the end of the Test Period that are and are not reflected in the application. If anticipated, but not reflected in the application, explain why they are not included. This should provide information on major plans or programs beyond cost management efforts undertaken in the normal course of business. This should include, but not be limited to, a detailed description of the plan, number of employees offered or projected to be offered early retirement or severance, number of employees accepting or projected to accept early retirement or severance, projected cost savings and costs associated with the program. For costs incurred, identify the amounts, by FERC account, and the dates the entries were booked.

23. Employee Costs - Employee Level. Separate lists of the budgeted and the actual number of employees (where available), by month, for the Base Year, the prior Historical Year, the Test Period and To Date. If the labor force levels are other than full-time equivalent positions, provide a separate listing stated in terms of full-time equivalent positions.

24. Employee Costs - Wages and Salaries Levels. The actual percentage of increases in salaries and wages for exempt, non-exempt and union employees for the Base Year, the prior Historical Year, Test Period and To Date.

25. Employee Costs - Incentive Plans. Complete copies of bonus programs or incentive award programs in effect for the utility for the Base Year, the prior Historical Year, the Test Period and To Date. Identify incentive and bonus program expenses incurred in the Base Year, the prior Historical Year, the Test Period and To Date and identify the amounts included in the Test Period. Identify the accounts charged. Identify incentive and bonus program expenses charged or allocated to the utility from affiliates or the parent company in the Base Year, the prior Historical Year, the Test Period and To Date.

26. Employee Costs - Benefits. A listing of health and other benefits received by employees during the Base Year. Provide a detailed description of changes to employee benefits occurring subsequent to the Base Year To Date and anticipated future changes through the end of the Test Period that are reflected in the filing.

27. Employee Costs - Pensions. The two most recent pension actuarial reports prepared for the utility.

28. Employee Costs - Post Retirement Benefits Other Than Pensions (PBOP). The two most recent PBOP actuarial reports prepared for the utility.

29. Employee Costs - Pensions and Post Retirement Benefits Other Than Pensions (PBOP). The list of assumptions used by the utility and its actuaries regarding the pension and PBOP costs for the Test Period that are included in the filing.

30. Operation, Maintenance, Administrative and General (OMAG) Expenses - Other - Contributions. For the Base Year and the Test Period, a list of contributions for charitable and political purposes, if any, included in accounts other than below the line. Indicate the amount of the expenditure, the recipient of the contribution, and the specific account in which the expense is included in the filing. Also identify for the Base Year and the Test Period the amounts of contributions for charitable and political purposes charged to the utility from affiliates in accounts other than below the line accounts.

31. OMAG Expenses - Advertising. For the Base Year, the prior Historical Year and the Test Period the amount of advertising expense, by account, by type of advertising (i.e., informational, instructional, promotional).

32. OMAG Expenses - Dues, Industry Associations. The Material amounts included in the Base Year, the prior Historical Year and the Test Period for above-the-line payments to industry associations. Identify the organization/association name and amounts, along with the account in which the costs are included in the filing. If any of the dues or other amounts paid to the organizations/associations go toward lobbying and public relations efforts and are recorded in above-the-line accounts, provide the associated amounts included in the above-the-line accounts whether Material in magnitude or not.

33. OMAG Expenses - Outside Services Expense. An itemization of Material outside services expenses included in FERC account 923 for the Base Year, the prior Historical Year and the Test Period.

34. OMAG Expense - Injuries and Damages. The amount of injuries and damages expense for the Base Year, the prior Historical Year, the Test Period and To Date.

35. OMAG Expense - Insurance. The amount of insurance expense, by insurance type (i.e., property insurance, liability insurance, workers compensation, directors and officers liability insurance, etc.) for the Base Year, the prior Historical Year and the Test Period and identify the accounts the associated costs are included in.

36. OMAG Expense - Insurance. For insurance coverage for which the utility is self-insured, a description of that self insurance, a description of how it is accounted for in the utility's books and records and a description of activity for the Base Year, the prior Historical Year and the Test Period.

37. OMAG Expense - Legal Settlements. A list of Material amounts included in the Base Year and the Test Period (on a direct charge basis, affiliate billing, or allocation) that are the result of the settlement of lawsuits or other legal action.

38. OMAG - Uncollectibles - Bad Debt Reserve. For the Base Year, the prior Historical Year and the Test Period the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same periods, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

39. OMAG - Uncollectibles. A detailed description of changes in the utility's collection policies or write-off policies since the filing of the prior general rate case.

40. OMAG - Cost-saving Programs. A list and detailed description of cost-saving or cost increasing programs and initiatives implemented during the Base Year, To Date, and included in the Test Period. This should provide information on major plans or programs beyond efforts undertaken in the normal course of

business and having a Material impact.

41. Financial - Strategic Plans. Copies of completed strategic plans and the most recent plan approved by the Board of Directors for the utility and the plan that was utilized at the time of and in the preparation of its application, if different.

42. Penalties and Fines. A list of penalties and fines in the Base Year and the Test Period and indicate in which accounts the associated amounts are included.

43. Rate Base - Working Capital. A complete copy of the lead/lag study, with supporting workpapers, used to compute cash working capital for the utility's application.

44. Reserve Accounts. Information on whether or not the utility maintains reserve accounts (e.g., an injuries and damages reserve account). If so, provide the monthly balances in reserve accounts for the Base Year, the prior Historical Year, the Test Period and To Date. This listing should include the monthly debits and credits to the reserve accounts. Also, provide the amount included in the Base Year and the projected Test Period expenses, by account, for building-up the reserve balances.

45. Revenues: Regulated Retail Sales. Provide by customer class, by month, the number of customers, actual usage, and normalized usage for the Base Year, the prior Historical Year, the Test Period and To Date.

46. Revenues - Other. Provide on a total company and a Utah jurisdictional basis, for the Base Year, the prior Historical Year, the Test Period and To Date the amount of other nonregulated-retail-sales revenues by revenue type.

47. Sales of Property. For the Base Year, the prior Historical Year, the Test Period and To Date, information showing whether the utility sold property, in which the proceeds for a property, which alone, or for multiple properties, which in the aggregate, would be Material. If so, for each such sale identify the property sold; whether, when, and in what manner it was included in rate base; show details of how the gain or loss was calculated; indicate when the sale occurred; and explain how and whether the utility is treating such gain or loss in its application. For sales in which the proceeds would be Material, individually or in the aggregate, provide a list of any properties currently offered for sale and those projected to be offered for sale through the end of the Test Period. The property sales information may be limited to sales of property that had been or are included in Utah rates while in service.

48. Taxes: Income. A list of and provide copies or make available for review, subject to R746-1-601 through 605, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, depending on specific content, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the filing of the prior rate case.

49. Taxes: Income. Provide copies or make available for review, subject to R746-1-601 through 605, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, copies of the most recent State and Federal income tax returns in which the utility participated.

50. Taxes: Income. Provide a copy of the current tax sharing agreement in which the utility participates.

R746-700-23. Additional Power Costs Information for a Forecasted Test Period to Be Filed by an Electrical Corporation.

A. An electrical corporation that has included power costs in a forecasted test period shall also file with the Commission the following information or documents relating to its power cost projections with a general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-23 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation shall provide the following information and documents

to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

B. All information should be provided or available electronically and, in the case of Excel spreadsheets, with all formulas intact including all hierarchy of linked spreadsheets. The term "PCM" herein refers to any power cost model used by the utility, or any subsequent enhancements to or replacements of the power cost model used in the utility's last prior general rate case. The term "workpapers" means the documents used to develop the inputs to the PCM. This may include such items such as contracts, emails, white papers, studies, utility computer programs, Excel spreadsheets, word process documents, pdf and text files, computer programs, or any other data or documents relied upon to support the cost details in the application. If the inputs used in the PCM were developed from a document, such as a contract, provide the contract with the PCM inputs highlighted.

C. Power Cost Modeling Data:

1. Workpapers that show the source, calculations and details supporting the testimony, other exhibits and all PCM input data. The workpapers will include, at a minimum, copies of the net power cost report in Excel and the net power cost model database.

2. Identification of the time periods (Reference Period) used to determine input items (e.g., outage rates) in the PCM which are based upon an examination, average, etc. of a multi-year period.

3. Compilations of actual net power costs produced by the utility that were referenced in the testimony or exhibits, to the extent that actual power cost results are discussed or cited in the utility's testimony or exhibits.

4. A list and explanation of all modeling or logic changes or enhancements to the PCM that have been implemented since the last prior general rate case. This will include a statement of the direction and amount of change in net power costs resulting from each such change and documentation describing each Material change as well as PCM runs and workpapers quantifying the impacts of these changes.

5. Access to or a copy of the PCM model used by the utility to compute power costs in the Test Period.

6. The latest documentation for the PCM.

7. The current topology maps in the PCM along with an explanation for all the differences that have been made to the topology since the last prior general rate case and an explanation of why the changes were made. Include supporting documentation, such as contracts resulting in changes to the transfer capabilities used in the PCM.

8. All documents, workpapers, data or other information used by the utility in determining, setting, or calculating any PCM input, constraint, etc., including, but not limited to, where applicable:

a. market caps,

b. outage rates (planned and unplanned) including all backup data showing each outage (planned or unplanned, etc.) and duration (planned or unplanned) considered in the Reference Period, including NERC cause code, type of event, duration, energy lost, etc.,

c. the date and a copy of any forward price curve used, showing monthly heavy load hour and light load hour,

d. short-term firm transactions (including short-term firm indexed transactions and swaps), each transaction or contract will have a designation as to its purpose (i.e., trading, arbitrage or balancing.),

e. all contracts modeled in the PCM that were not included in or have been amended since the last prior general rate case, providing for each:

(i) A copy of the contract (in pdf or electronic format, if available), and

(ii) input assumptions related to the contract,

f. all fuel cost inputs,

g. heat rate curves for each resource, including the derivation of the heat rate curves,

h. identification of each instance in which the utility changed

any maximum capacities, minimum up or down times or unit minimum capacities for thermal or hydro generators modeled in the PCM since the last prior general rate case,

- i. each load adjustment,
- j. inputs for Qualifying Facility or QF contracts,
- k. screens applied to restrict uneconomic dispatch of resources,
- l. start up fuel costs, start up O and M costs and any other form of start up costs modeled,
- m. loss factor data used to develop the load forecast for the system and for each state for the most recent five calendar years and for the most recent five fiscal years; include a comparison of those loss factors to those that were used in developing loads for the PCM for the test period used in the case,
- n. the system level loss factors assumed in any PCM used in the most recent (or current) rate cases for any other jurisdiction in which the utility operates,
- o. the actual generation of each coal, gas, hydro and wind generating unit modeled in the PCM for each month for the Reference Period,
- p. hourly generator logs for each wind, coal, gas and hydro unit modeled in the PCM for the Reference Period,
- q. the schedule for each generation unit's planned and actual outages for the test period, the most recent calendar year and the next four calendar years,
- r. hourly logs for all contracts modeled in the PCM, showing actual data (hourly sales or purchases) for the Reference Period,
- s. the details of Short Term Firm and Non-Firm transmission used by the utility during the Reference Period.
- t. for each of the transmission contracts whose costs are included in the PCM, identify the purpose of the transaction, why it is used and useful in the test period, the amount of capacity or type of transmission service it provides, and where the capacity or service provided by this contract is modeled in the PCM,
- u. data for the Reference Period or for the most recent four years available for all third party transmission imbalance transactions that have been included in Short Term Firm or secondary transactions during that period,
- v. any links and other inputs for Short Term Firm (including any related to SP 15) and Non-Firm transmission modeling used in the PCM,
- w. the hydro planned and unplanned outage rate,
- x. to the extent that the utility uses any ramping adjustment in its case, information describing and detailing all ramping adjustments made (including all ramping energy assumed to be lost for each outage event modeled in the ramping analysis),
- y. the costs of wind integration as modeled in the PCM, and
- z. hedging contracts, already in place and those assumed for forecasting purposes.

R746-700-30. Information for an Alternative Cost Recovery for a Major Plant Addition Application Filed by an Electrical Corporation or a Gas Corporation.

An applicant submitting an alternative-cost-recovery-for-a-major-plant-addition application shall include the following information as part of the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods where applicable. If the same information was previously provided by the applicant in a prior proceeding in which the plant's construction or acquisition was approved by the Commission pursuant to 54-17-302, the applicant shall provide copies of such previously provided information with the application. If the plant's construction or acquisition was approved subject to conditions pursuant to 54-17-302, the information shall be provided as ordered by the Commission in the order approving the major plant addition subject to conditions. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-30 rule

requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information.

1. All documents and presentations that were provided to management, senior management and the Board of Directors of the utility and its affiliates related to the plant addition.
 2. Copies of all Board of Directors' minutes of the utility and its affiliates where the plant was discussed, approved, reviewed, evaluated, or presented.
 3. Details of the plant being acquired including its location, capacity, technologies used, project milestones or progress dates, projected in-service date and demonstrating that the plant addition is a major plant addition under 54-7-13.4.
 4. Description of any changes, modifications, etc. to the existing utility plant/system that may be necessary to integrate the plant addition with the utility's system.
 5. Information establishing the prudence of the plant addition, information addressing the provisions of 54-7-13.4, and the provisions of 54-17-302 and 54-17-303.
 6. Information establishing the consistency of the plant addition to projected plant acquisitions in the utility's latest Integrated Resource Plan and its Action Plan. Show that the plant addition resource is as favorable or more favorable than the compared Integrated Resource Plan resource items in terms of least cost and least risk or explain why it need not.
 7. Any and all documents and analyses that address the plant addition's projected costs, savings and benefits and demonstrate how and when the utility's ratepayers will see a net benefit from the plant addition and quantify the net benefit.
 8. Where applicable, information on whether and how the plant addition has been or will be inspected as part of due diligence, including identification of who conducted or will conduct the inspection and copies of all reports or other documents prepared by the inspectors.
 9. A list of all outside consultants or advisors used, or expected to be used by the utility in connection with the plant addition and all reports, including interim reports, prepared by outside consultants or advisors.
 10. All internal reports that were prepared when analyzing the purchase or construction of the plant addition.
 11. Where applicable, copies of contracts that are expected to be assumed following close of acquisition.
 12. Where applicable, copies of all contracts between the utility and the seller or operator of the plant addition.
 13. Where applicable, a history of the plant addition to be acquired including financial and performance characteristics for the past five years, or from the start of commercial operation, whichever is less.
 14. Where applicable, information on the utility's understanding of the reasons why the seller is selling the facility.
 15. Where applicable, information on the seller's book value of the plant.
 16. An indication whether the seller will allow interested persons who have signed a confidentiality agreement with the utility access to the seller's books and records for audit, and what restrictions may apply to such access.
- B. Financial and Revenue information.**
1. Provide information of the revenues, costs and benefits arising from the plant addition, identifying any limits and conditions on forecast information/calculations.
 2. Information on the net revenue impact of bringing the plant online and operating the plant within the utility's system compared to operations without the plant.
 3. Justification for any acquisition premium the utility plans to include in rates and recover from ratepayers.
- C. Capital cost, rate base and jurisdictional allocation information.**
1. Information on how the utility plans to finance the

construction or acquisition of the plant addition. This is to include the timing and amount of any equity, debt, or other security issuances and any documents to, or received from, any investment bankers or other entities regarding the issuance of any securities connected with the plant addition.

2. Information indicating whether the utility has discussed the plant addition with any rating agencies and provide any reports or rating agencies provided with respect to the plant addition. If not, indicate when it plans to discuss the plant addition with any rating agency.

3. Information on how much of the purchase price or construction costs the utility intends to place into rate base.

4. Information showing the amount and relating to any analysis of AFUDC associated with the plant addition.

5. Information on the utility's anticipated jurisdictional allocation for the plant addition and any change in allocation factors and other plant, revenue and expense/cost allocations arising from the plant addition.

D. Cost and Operating Expenses Information.

1. A complete analysis of all costs associated with constructing, acquiring and operating the plant for which the utility will seek recovery from Utah ratepayers and identify any costs for which no recovery will be sought from Utah ratepayers.

2. Information on all clearances, permits or other government regulatory authorizations necessary, to be modified and completed for the plant and their associated costs.

3. Information on any liquidated damages clause and early termination fees, penalties, or other expenses which may be incurred if the plant is not completed or acquired.

4. Information on whether that are any integration costs or fees (transmission, pipeline, etc.).

5. Information on any costs analysis analyzing bringing the plant online.

6. Information on how the plant addition will change and the amount of change on the utility's Operation and Maintenance costs.

7. All operating cost analyses that have been completed related to the plant addition.

8. The planned accounting treatment for the plant, including the proposed journal entries or other accounting entries for such planned accounting treatment.

9. A description of and the amounts for overhead, closing, contingent or any other costs for which the utility expects it will seek recovery as a result of the acquisition.

E. For an electrical corporation, the following Net Power Costs information.

1. The impacts of the plant addition on any utility power cost and production cost dispatch models. If any models are revised to accommodate the plant addition, the revised models will be available to the parties participating in the application proceeding.

2. A net power cost study (NPC) in the utility's production cost dispatch model that documents changes from previous net power cost estimates. All relevant workpapers and documentation to allow any other person to perform an independent analysis and verification of the NPC will be provided.

3. Show how the plant addition impacts planned outages, unplanned outages, and maintenance at the utility's generation resources.

R746-700-40. Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-40 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other

manner so long as it is clearly identified.

A. General Information

1. Historical results of operations information consisting of actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period used as a basis for the test period.

2. Adjusted results of operations for the same period. These adjustments shall include, but are not limited to, normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application.

3. Description and details for all additional adjustments necessary to arrive at the test period used in the general rate case application.

4. A description of any significant changes in accounting policies or procedures for the 12-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a future test period is used, any future changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

5. Information giving a fully referenced Part 64 and, where available, a Part 36 allocation. If no Part 36 allocation information is available, the utility shall provide an alternative permitting comparable cost of service allocations. Fully referenced means that sources of all total amounts are indicated and that source documents are included in the filed information. The names and sources of allocators to determine jurisdictional or non regulated portions shall be included in lines with the allocated amounts. The Part 64 allocation shall provide full allocation of all joint costs incurred by the utility for both non-regulated and regulated activities and affiliated companies.

6. A copy of each adjusting journal entry made with supporting documentation in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. The utility will identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

7. A copy of management letters received from the utility's outside auditors or responses to those management letters for the time period of the beginning of the historical period to the date of filing of the application.

8. A listing of internal audits, and copies thereof, conducted by or for the Company or its parent for the time period beginning with the historical period to the date of the application, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs are allocated or directly charged to Utah regulated operations included in the general rate case application.

9. Beginning with the start of the historical period, provide the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status. Include a personnel organization chart with names that provides line of authority and reporting for board members, management and mid-management including joint responsibilities for non-regulated affiliate responsibilities.

10. A detailed description of corporate restructurings and changes in affiliate relationships since the prior general rate case and also describe changes in the corporate and affiliate relationships between the historical period and the end of the test period used in the application.

11. Beginning with the two years prior to the historical period through the date of the application, provide the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve

adjustment, other charges or credits, and the ending reserve balance. For the same period, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

12. A detailed description of any changes in the utility's collection policies or write-off policies since the last general rate case.

13. A list of penalties and fines in the historical period and the test period and indicate in which accounts the associated amounts are included.

14. Description of all calculations and all supporting spreadsheets and explicit data source information for all numbers in the narrative portion of the application or any testimony and exhibits included with the application.

B. Tax adjustments

1. An exhibit explaining procedures used to calculate test period tax adjustments.

2. An adjustment summary for tax expenses for normalized results of operations.

3. Information explaining every adjustment that is done to test period tax expense and that is shown in the adjustment summary. Adjustments will be in "top sheet" form.

4. A list of, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

5. A copy of the current tax sharing agreement in which the company participates.

6. List all property held for future use included in rate base. Listed property shall not include any item included in plant in service in rate base and the pro forma balance. The description shall include:

- a. Location of property;
- b. Date of acquisition;
- c. Original cost;
- d. Accumulated depreciation;
- e. net original cost;
- f. Planned or expected in-service date; and
- g. Planned or expected use of property.

7. Copies of supporting work papers on the account Property Held for Future Use which shall include an explanation of all additions and transfers, including:

- a. Description of property;
- b. Description of transaction; and
- c. Amount.

C. An applicant need not file the following information or documents with a general rate case application, but shall have such information and documents available for delivery and shall include a certification with its application that this information and these documents have been prepared and are available at the time it files its general rate case application. Contemporaneously with the filing of an application, an applicant shall also deliver this information and these documents to the Division of Public Utilities.

1. The financial audit work papers for the most recent completed financial audit conducted by the utility's independent auditors. The utility will provide a letter authorizing the external audit firm to meet with requesting parties to discuss work papers with them and allow parties to make copies of selected work papers.

2. Any revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

3. Copies of the most recent State and Federal income tax returns in which the utility participated.

R746-700-41. Cost of Service and Rate Design Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Utah Class Cost of Service Study or alternative comparable class cost of service information based on the test period

with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

R746-700-50. Information for a General Rate Case Application for a Water Corporation.

An applicant shall be in compliance with the reporting requirements of R746-400 prior to submitting an application for a general rate case. If the applicant is not in compliance with that rule, the applicant shall first submit any missing reports prior to submitting an application for a general rate case. An applicant submitting a general rate case application shall provide the following information with the application:

A. General Information:

1. Most recent Division of Drinking Water certification/report.
2. Certificate of Public Convenience and Need Number granted by the Commission and its date.
3. Date the utility started operation.
4. The number of connections approved and current area served, which may be shown by service area map.
5. Ownership and officers.
6. Associated companies (if any).
7. A copy of its current tariff.

B. Engineering Information.

1. Source of water supply
 2. Information for all Wells
 3. Mains and meters information
 4. Reservoirs information
 5. Storage capacity
 6. Service deficiencies and remedies
 7. Service quality
 8. Additions or improvements in the last five years
 9. Any anticipated additions or improvements
 10. Efforts to encourage conservation
- C. Customer Connection Information**
1. Each connection identified by unique lot number or address
 2. The date first put into service
 3. Whether metered or unmetered.
 4. Whether classified as residential or commercial
 5. The water usage per month or billing cycle, showing minimum and average gallons used
 6. The amount billed per month or billing cycle
 7. The anticipated growth, showing minimum and average gallons used
 8. Water usage and billings projected for the next three years
 9. Information on any secondary/irrigation water system (the same information as C. 1, 2, 5, 6, 7 and 8 above).
 10. Identification whether secondary water is distributed through the culinary system.

D. Accounting and Financial Data, which shall include the prior two complete years and current up to the date of general rate case application, unless otherwise specified:

1. Identification (contact information) for any accountant used by the utility.

2. Copies of the General Ledger.
3. Copies of the Balance Sheet
4. Copies of the Income Statement

5. Pro Forma Income Statements, categorized by the National Association of Regulatory Utility Commissions, NARUC, System of Accounts, to include:

- a. the prior two years of revenues and expenses, and

b. the projected revenues and expenses for the next three years, to include the Company's anticipated growth rate and requested rate increase.

6. A copy of or the utility's check register
7. Billing documentation/reports, tied back to the tariff rates
8. Information on the utility plant, including, but not limited

to:

- a. Acquisition date,
 - b. Acquisition price or cost,
 - c. Salvage value,
 - d. Expected useful life,
 - e. Annual depreciation amount per asset,
 - f. Accumulated depreciation per asset and reconciled to the total accumulated depreciation amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments),
 - g. If an asset was donated, the amount applied to Contribution in Aid of Construction per asset,
 - h. If donated, the accumulated amortization of the Contribution in Aid of Construction per asset and reconciled to the total accumulated amortization amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments), and
 - i. Projected future asset purchases for the next three years, providing the estimated acquisition date and price.
9. Copies of tax returns for the prior two complete years,
 10. Information on all Notes Payable, Loans, and other Obligations, This will include all outstanding and those retired within the past two years, including:
 - a. Interest rate,
 - b. Beginning date,
 - c. Date of last scheduled payment (the Loan pay-off date), and
 - d. Amount of payment
 - E. Customer Notice Information
 1. A copy of any notice sent to customers notifying them that the utility is seeking a rate increase.

R746-700-51. Cost of Service and Rate Design Information for a General Rate Case Application for a Water Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

- A. A Class Cost of Service Study, if one has been prepared, based on the test period with supporting documentation including the development of allocation factors.
- B. Its proposal for spreading any revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.
- C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.
- D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

KEY: utilities, filings, applications, major plant additions
September 23, 2009 54-7-12(1)(b)(ii)
Notice of Continuation August 7, 2019 54-7-13.4(1)(a)(ii)

R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.

R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Forest Products: include boughs, branches, pinyon nuts, cones, and Juniper berries.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78B-8-602.

R850-70-400. Small Forest Product Permit Sales.

1. The agency may make non-competitive sales of forest products with a Small Forest Products Permit.

2. The agency may not sell sawlogs under a Small Forest Product Permit.

3. The total sale value of a Small Forest Product Permit issued

for the sale of forest products, excluding wildland seed, shall not exceed \$500.00.

4. The total sale value of a Small Forest Product Permit issued for the collection of wildland seed shall not exceed \$5,000.00.

5. Persons purchasing Small Forest Product Permits for the collection of wildland seed shall be restricted to a total value of \$5,000.00 per calendar year.

6. Persons purchasing Small Forest Product Permits for eligible forest products, excluding wildland seed, shall be restricted to a total value of \$500.00 per commodity per calendar year.

7. Small Forest Product Permits shall be issued on a form prescribed by the agency.

8. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

R850-70-500. Noncompetitive Sales.

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

R850-70-600. Competitive Sales.

1. Except for sales made under a Small Forest Product Permit pursuant to R850-70-400, sales of forest products, excluding wildland seed, shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

- (i) the legal description of the affected lands;
- (ii) the species and estimated quantity of forest products;
- (iii) minimum sale price;
- (iv) bond amounts;
- (v) advertising and processing costs, as far as is known;
- (vi) dates of bidding period;
- (vii) date, time, and location of oral auction; and
- (viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within 10 business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within 10 business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

R850-70-650. Sale of Wildland Seed.

1. Sales of wildland seed, with the exception of sales made under a Small Forest Product Permit pursuant to R850-70-400, shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised by sending a notice of the sale to potential purchasers and other interested parties on an agency-maintained mailing list. This notice may be circulated through electronic means.

(b) The agency may advertise sales of wildland seed using any other methods the director has determined may increase the potential for additional interest in the sale.

(c) The cost of the notice shall be borne by the successful applicant.

(d) The notice shall contain, but is not limited to, the following:

- (i) the legal description of the affected lands;
- (ii) the species and estimated quantity of wildland seed;
- (iii) the minimum sale price;
- (iv) required bond amounts;
- (v) advertising and processing costs, so far as is known;
- (vi) dates of bidding period; and
- (vii) bidder qualifications.

(e) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within five business days of the bid opening that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown.

(f) The agency shall declare the successful bidder within five business days of the bid opening.

(g) Failure of the successful bidder to execute a contract within 30 days of the receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion, any wildland seed sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

3. Performance and payment bonds may be required prior to the commencement of harvest operations for the collection of wildland seed at the sole discretion of the agency.

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product, excluding wildland seed, where the value exceeds \$500.00.

2. Timber Sale Contracts must be used for all sales of wildland seed where the value exceeds \$5,000.00.

3. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

2. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall post with the agency bonds in the form and amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

(a) A performance bond shall be submitted in an amount at least twice the estimated cost of rehabilitation.

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the

discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) An irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Small Forest Product Permits and other non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

1. Increasing the amounts and extending the effective dates of bonds; and,

2. Increasing the price of the forest products authorized by the contract.

R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1300. Fees and Procedures.

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).

KEY: forest products, administrative procedures, timber

August 7, 2019

Notice of Continuation December 4, 2017

53C-1-302(1)

53C-2-201(1)(a)

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.****R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.**

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
 - (a) orally or in writing;
 - (b) in person or through counsel; and
 - (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

- (2) Appeals to the commission shall include:
 - (a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
 - (b) a copy of the notice required under Section 59-2-919.1;
 - (c) a copy of the minutes of the board of equalization;
 - (d) a copy of the property record maintained by the assessor;
 - (e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;
 - (f) a copy of the evidence submitted by the parties to the board of equalization;
 - (g) a copy of the petition for redetermination; and
 - (h) a copy of the decision of the board of equalization.
- (3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.
- (4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.
- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.
- (6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.
 - (b) A party may raise a new issue before the commission.
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsections (5)(a) through (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsections (5)(a) through (c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,
2. the revenue laws of the state of Utah, and
3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-

210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to

employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at

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(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall

issue a reply within two working days.

(a) The reply shall advise the individual that:

- (i) the requested accommodation is being supplied; or
- (ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
- (iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at

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(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

- (i) the individual's name and address;
- (ii) the nature and extent of the individual's disability;
- (iii) a copy of the accommodation coordinator's reply;
- (iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
- (v) a description of the accommodation desired; and
- (vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

- 1. name;
- 2. home address;
- 3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

- 1. name;
- 2. home address; and
- 3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

- 1. name;
- 2. home address; and
- 3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission;

(f) liaison with the Legislature;

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 63G-4-201 and 68-3-8.5.

(1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the petition was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(2) If a statute provides the period within which an appeal may be filed, a petition for adjudicative action is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition

is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(3) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission;

or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission;

or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the

request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or

her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled

testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties

or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

- a) the nature of the claim being settled and any claims remaining in dispute;
- b) a proposed order for commission approval; and
- c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

- a) If approved, the settlement agreement shall take effect by its own terms.
- b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow

thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234.(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through

a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-

404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for

reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor: The taxpayer:

(i) furnishes all necessary and relevant information to a competent tax advisor, and the tax advisor:

(A) incorrectly advises the taxpayer;

(B) fails to timely file a return on behalf of the taxpayer; or

(C) fails to make a payment on behalf of the taxpayer; and

(ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or

forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and

(3) United Parcel Service (UPS):

(a) UPS Next Day Air;

(b) UPS Next Day Air Saver;

(c) UPS 2nd Day Air;

(d) UPS 2nd Day Air A.M.;

(e) UPS Worldwide Express Plus; and

(f) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

- (xv) R861-1A-34, Private Letter Rulings;
- (xvi) R861-1A-38, Class Actions;
- (xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and
- (xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and
- (b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.
- (2) Written minutes of a meeting under Subsection (1)(b) shall include:
 - (a) the date, time, and place of the meeting;
 - (b) the names of each person present at the meeting;
 - (c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;
 - (d) a record, by commissioner, of each vote taken by the commission;
 - (e) a summary of comments made by a person, other than a commissioner, present at the meeting; and
 - (f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.
- (3) Recorded minutes of a meeting under Subsection (1)(b) shall be:
 - (a) properly labeled or identified with the date, time, and place of the meeting; and
 - (b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

- (1) Definitions.
 - (a) "Division" means the Auditing Division of the commission.
 - (b) "Purchaser refund request" means:
 - (i) a refund request for sales tax overpaid; and
 - (ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.
 - (c) "Required information and documents" means, for each transaction included in a purchaser refund request:
 - (i) a description of the item for which a refund is requested;
 - (ii) the invoiced transaction date;
 - (iii) the taxable purchase amount;
 - (iv) the tax rate applied to the purchase amount;
 - (v) the invoice number;
 - (vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
 - (vii) the sales tax paid;
 - (viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
 - (ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
 - (x) the amount of sales tax overpaid;
 - (xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
 - (xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
 - (xiii) the name and address of the seller; and
 - (xiv) a signed statement that the seller that calculated and remitted the sales tax:
 - (A) has not provided a sales tax refund or credit; and
 - (B) will not be asked to provide a sales tax refund or credit.
 - (2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.
 - (b) The items described in Subsection (2)(a) shall be provided

to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

- (d) The notice described in Subsection (2)(c) shall:
 - (i) indicate the required information and documents that are missing; and
 - (ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

- (i) evaluate the purchaser refund request based solely on the required information and documents received; and
- (ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

- (i) the invoice number;
- (ii) the invoiced transaction date;
- (iii) the taxable purchase amount;
- (iv) the tax rate applied to the purchase amount;
- (v) the sales tax paid;
- (vi) the amount of sales tax overpaid;
- (vii) the name and address of the seller
- (viii) a description of the item for which a refund is requested;

and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

- (i) determine the items that will be included in the sample;
- (ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and
- (iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in

Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

59-7-517
63G-3-301
63G-4-102

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

76-8-502
76-8-503
59-2-701
63G-4-201

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:

63G-4-202
63G-4-203
63G-4-204

(i) considered errors; and
(ii) included in the overall error factor by which the purchaser refund request is decreased.

63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

68-3-7
68-3-8.5

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

69-2-5

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- 59-1-210
- 59-1-301
- 59-1-302.1
- 59-1-304
- 59-1-401
- 59-1-403
- 59-1-404
- 59-1-405
- 59-1-501
- 59-1-502.5
- 59-1-602
- 59-1-611
- 59-1-705
- 59-1-706
- 59-1-1004
- 59-1-1404
- 59-7-505
- 59-10-512
- 59-10-532
- 59-10-533
- 59-10-535
- 59-12-107
- 59-12-114
- 59-12-118
- 59-13-206
- 59-13-210
- 59-13-307
- 59-10-544
- 59-14-404
- 59-2-212
- 59-2-701
- 59-2-705
- 59-2-1003
- 59-2-1004
- 59-2-1006
- 59-2-1007
- 59-2-704
- 59-2-924

R865. Tax Commission, Auditing.**R865-91. Income Tax.****R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-136.**

For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

R865-91-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-91-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal

places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-91-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

(1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

(b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

(2) The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as defined under Section 59-10-103. This percentage is the Utah portion of AGI divided by the total AGI, not to exceed 100 percent.

(3) The Utah portion of a part-year resident's AGI shall be determined as follows:

(a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.

(b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of AGI. Any dividend exclusion shall be deducted from the Utah portion of AGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the AGI.

(d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.

(4)(a) Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of AGI:

(i) if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

(b) Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of AGI only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

(5) Moving expenses deducted on the federal return may be deducted from the Utah portion of AGI only to the extent that they are for moving into Utah and within Utah.

(6) Employee business expenses may be deducted from the Utah portion of AGI only to the extent that they pertain to the production of income included in the Utah portion of AGI.

(7) Payments by a self-employed person to a retirement plan that reduce the total AGI may be deducted from the Utah portion of AGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

(8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

R865-91-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-91-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;
2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;
3. compute the tax applicable to the state taxable income as annualized;
4. divide the tax as computed on the annualized state taxable income by 12; and
5. multiply the result by the number of months in the period involved.

R865-91-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-91-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-

through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

- (a) name;
- (b) address;
- (c) social security number;
- (d) percentage of ownership in pass-through entity;
- (e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

- (i) charitable contributions;
- (ii) total foreign taxes paid or accrued; and
- (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

- (i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;
- (ii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or
- (iii) a person exempt from state income tax under Section 59-10-104.1.

(6) For purposes of Subsections 59-10-1403.2(5) and (6), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah

resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

R865-91-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,
2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;
2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-91-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-91-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;
2. the employer's Utah withholding tax account number;
3. the amount of compensation;
4. the amounts of federal and Utah state income tax withheld;
5. the social security number of the employee;
6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-91-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

- (a) a federal Schedule H; or
- (b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of \$1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-91-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-1-1406.

(1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

(2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All records shall be made available to an authorized agent of the commission when requested, for review or audit.

R865-91-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-91-6).

R865-91-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the

executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-91-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

(3) A partnership may satisfy the requirement to file a return with the commission by maintaining records that show each partner's share of income, losses, credits, and other distributive items, and making those records available for audit if:

- (a) all of the partnership's partners are resident individuals; and
- (b) the partnership is not a pass-through entity taxpayer.

R865-91-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-91-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-91-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-91-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-91-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-91-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-91-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-91-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 10, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 10, and Title 63M, Chapter 1 against Utah individual income tax due in the following order:

- (1) nonrefundable credits;
- (2) nonrefundable credits with a carryforward;
- (3) refundable credits.

R865-91-44. Mandatory Withholding of Income for Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

(1) Definitions.

(a) "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

(i) Duty days includes:

(A) days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and

(B) game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(ii) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

(iii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(iv) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

(v) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

(b) "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.

(d) "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

(i) Total compensation does not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in Subsection (5) are:

(A) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(B) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(e) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

(i) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

(2) The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

(3) If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

(4) A professional athletic team:

(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and

(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.

(5) Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

(6) The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

(7)(a) Professional athletic teams shall withhold and remit tax on behalf of nonresident professional athletes on a form prescribed by the commission.

(b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional athletic team:

(i) name;

(ii) address;

(iii) social security number;

(iv) income attributable to Utah for the nonresident member of a professional athletic team;

(v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;

(vi) the nonresident member of a professional athletic team's duty days both within and without the state;

(vii) the nonresident member of a professional athletic team's duty days within the state;

(viii) Utah tax deducted and withheld; and

(ix) federal income tax deducted and withheld.

(8) A nonresident member of a professional athletic team is not required to file an individual income tax return if:

(a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;

(b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and

(c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a professional athletic team receives from the professional athletic team.

R865-91-46. Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of Subsection (1), account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

(a) the beginning balance in the account;

(b) the amount contributed to the account;

(c) the account's earnings;

(d) distributions for qualified medical expenses;

(e) distributions for non-medical expenses not subject to penalty;

(f) distributions for non-medical expenses subject to penalty;

(g) the amount of penalty required to be withheld and remitted to the state;

(h) the account administrator's administrative fee charged to the account; and

(i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-91-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-91-23(C).

R865-91-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H

shall contain the following information for the calendar year:

- (a) the amount contributed to the trust by the account owner; and
- (b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.
- (3) The trustee of the trust shall file form TC-675H with the commission on or before March 31 of the year following the calendar year on which the forms are based.
- (4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.
- (5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-91-50. Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

- (1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and
- (2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-91-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

- (1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:
 - (a) of any change of address of the business;
 - (b) of a change of character of the business, or
 - (c) if the license holder ceases to do business.
- (2) The commission may determine that a person has ceased to do business or has changed that person's business address if:
 - (a) mail is returned as undeliverable as addressed and unable to forward;
 - (b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;
 - (c) the person fails to renew its annual business license with the Department of Commerce; or
 - (d) the person fails to renew its local business license.
- (3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.
- (4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).
- (5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-91-52. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the greatest possible credit.

R865-91-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

- (1) A taxpayer shall disclose a reportable transaction to the

commission by:

- (a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and
- (b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.
- (2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.
- (b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.
- (3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.
- (b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-91-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

- (1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.
- (2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.
- (3) A pass-through entity that is an S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.
- (4) For purposes of Title 59, Chapter 10, Part 14:
 - (a) the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and
 - (b) the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.
- (5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

KEY: historic preservation, income tax, tax returns, enterprise zones

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R873. Tax Commission, Motor Vehicle.**R873-22M. Motor Vehicle.****R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.**

(1) To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

- (a) the last registration certificate; and
- (b) a lien search from the recording jurisdiction or form TC-569A, Ownership Statement, in lieu of the lien search.

(2) To title or register a repossessed vehicle, an applicant must submit both of the following:

- (a) the outstanding certificate of title, with the lien recorded in favor of the repossessor; and
- (b) form TC-569B, Repossession Statement, signed by the lien holder recorded on the certificate of title or a similar statement or form.

(3) To title or register a vehicle previously owned by the U.S. government, an applicant must submit U.S. government Standard Form No. 97.

(4) To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

(a) a certificate of sale bearing the signature of the person who conducted the sale. The certificate must contain the following information:

- (i) date of sale;
 - (ii) name of person to whom the vehicle was sold;
 - (iii) complete description of the vehicle;
 - (iv) amount due on the contract;
 - (v) date that the amount due became delinquent; and
 - (vi) amount received from the sale of the vehicle;
- (b) a copy of the notice sent to the owner and lien holder of record; and

(c) proof that notice was published in accordance with Sections 38-2-4 or 38-8-3, as applicable.

(5) To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

- (a) a certified copy of the divorce decree;
- (b) the outstanding certificate of title; and
- (c) the last registration certificate for a nontitle state.

(6) To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

- (a) the outstanding certificate of title, endorsed for transfer by the guardian;
- (b) the last registration certificate for a nontitle state; and
- (c) a certified copy of the court order appointing the guardian.

(7) To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

- (a) a complete description of the vehicle;
- (b) name of the purchaser; and
- (c) the signature of the state, city, or county official who conducted the sale.

(8) To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the power of attorney to the Tax Commission.

(9) To title or register a vehicle transferred from a deceased owner when form TC-569C, Survivorship Affidavit, does not apply, the applicant must submit the outstanding certificate of title or the last registration certificate for a nontitle state. In addition, the applicant must submit one of the following:

- (a) a certified copy of the final decree of distribution;
- (b) an order from the court confirming sale; or
- (c)(i) an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

- (ii) When the title is issued in joint ownership where the

owners names are connected with "and" or "/", the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

(10)(a) When satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership, the Tax Commission may issue a title or a dismantle permit upon receipt of:

- (i) a court order; or
- (ii) subject to Subsections (10)(b)(ii) and (iii), form TC-569A, Ownership Statement.

(b)(i) The form required under Subsection (10)(a)(ii) must contain each of the following:

(A) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

(B) an explanation of how the vehicle was obtained and from whom;

(C) a statement indicating any outstanding liens or encumbrances on the vehicle;

(D) a statement indicating where the vehicle was last titled or registered;

(E) a description of the vehicle;

(F) any other items pertinent to the acquisition or possession of the vehicle; and

(G) an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit.

(ii) If the vehicle has a value of \$1,000 or less at the time of application, and the vehicle is less than six model years old, or the vehicle is a motorcycle, the vehicle may be subject to a physical examination by an employee appointed by the Tax Commission prior to issuance of a title or dismantle permit.

(iii) If the vehicle has a value in excess of \$1,000, the Tax Commission may require a surety bond in addition to the form described in Subsection (10)(a)(ii). The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

(11) To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish form TC-569D, Statement of Facts, explaining the acquisition of essential parts and the date construction was completed. The form must be supported by bills of sale or invoices for the parts.

(a) An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

(b) The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

(c) If satisfactory evidence of ownership is lacking, the procedure outlined in Subsection (10) must be followed.

(d) In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

(e) The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under

any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a-214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the

license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:
(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:
(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:
(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a) Passenger and Commercial	P00001
b) Motorcycles	M00001
c) Trailers	T00001
d) Reconstructed vehicle	R00001
e) Outboard Motors	E00001
f) Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

(1) If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

- (a) the outstanding Utah certificate of title showing a release of the prior lien;
- (b) an application or title, properly signed; and
- (c) the title fee.

(2) In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

- (a) the outstanding Utah certificate of title showing a release of the prior lien;
- (b) an application or title showing the registered owner and the new lienholder, and signed by the assigning lienholder; and
- (c) the title fee.

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

(1) An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

- (a) The yard must be identified by a conspicuously placed, well-maintained sign that:
 - (i) is at least 24 square feet in size;
 - (ii) includes the business name, address, phone number, and hours of business; and
 - (iii) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.
- (b) The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.
- (c) The yard must have adequate lighting.
- (d) A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.
- (e) The yard must have opaque fencing, which may be opaque chain link fencing, on any side that has frontage with a highway.
- (f) Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.
- (g) An office shall be located on the premises of the yard.
- (i) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.
- (ii) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.
- (iii) If a central office facility is authorized under Subsection (1)(g)(ii), the signs of all storage areas must provide the location of the office.

(h) The yard shall provide compressed air and battery boosting capabilities at no additional cost.

(2) Persons who can demonstrate an ownership interest in a

car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

- (a) An individual has ownership interest in the vehicle if he:
 - (i) is listed as a registered owner or lessee of the vehicle; or
 - (ii) has possession of the vehicle title.
- (b) An individual must show picture identification as evidence of his ownership interest.

(c) The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

(3) Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

(4) Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the commission at the time the vehicles are sold.

(5) The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.

(1) The registration period for aircraft is from January 1 through December 31.

(2) The average wholesale value of an aircraft is obtained from the "average wholesale" column listed in the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

(3) The database maintained by the Division of Aeronautics shall include the following information for each aircraft:

- (a) the name and address of the owner of the aircraft;
- (b) the airport where the aircraft is hangered;
- (c) the FAA number of the aircraft;
- (d) the aircraft manufacturer or builder;
- (e) the year of manufacture or the year the aircraft was completed and certified for air worthiness by the FAA;
- (f) the aircraft model as identified by the manufacturer or builder; and
- (g) the aircraft serial number.

(4) Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.

(5) The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

(6) The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the

following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,
2. dismantled vehicle,
3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;
4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and
5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:
 - a) cracks or chips in windows if the vehicle will pass a safety inspection;
 - b) paint chips or scratches that do not extend below the rust preventive primer coating;
 - c) decals or decorative paint;
 - d) decorative molding and trim made from plastic, light metal, or other similar material;
 - e) hood ornaments;
 - f) wheel covers;
 - g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;
 - h) vinyl roof covers or imitation convertible tops;
 - i) rubber inserts in bumpers or bumper guards; and
 - j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.
2. Cosmetic repairs do not include:
 - a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;
 - b) repair or replacement of any sheet metal;
 - c) repair or replacement of exterior or interior body panels;
 - d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and
 - e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;
2. Motor Estimating Guide;
3. Delmar Auto Series Complete Automotive Estimating;
4. CCC Autobody Systems EZEst Software;
5. ADP Collision Estimating Services; or
6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or

Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and
2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.
2. All repairs must be certified by an individual who:
 - a) owns or is employed by that body shop;
 - b) has repaired the vehicle or supervised any repairs he did not make;
 - c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and
 - d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by a total of five characters and numerals.

(2)(a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3)(a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9)(a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11)(a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has provided the individual described in Subsection (11)(b)(i) at least 30 days notice that the license plate will be revoked.

(12)(a) To qualify for a search and rescue special group license plate, an applicant must present one of the following:

(i) an official identification card issued by a county sheriff's office identifying the applicant as an employee or volunteer of that county's search and rescue team; or

(ii) a letter on letterhead of the county sheriff's office of the county in which the search and rescue team is located, identifying the applicant as an employee or volunteer of that county's search and rescue team.

(b) The division shall revoke a search and rescue special group license plate issued under Section 41-1a-418 upon receipt of written notification from the county sheriff's office of the county in which the search and rescue team is located, indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the search and rescue team has provided the individual described in Subsection (12)(b)(i) at least 30 days notice that the license plate will be revoked.

(13) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-419.

The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420.

(1) A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

(b) an identification number;

(c) a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

(d) a facsimile of the Great Seal of the State of Utah.

(2) Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

(a) The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

(b) An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

(c) A physician's certification is not required for renewal of a removable windshield placard.

(d) The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other

than disabilities which limit or impair the ability to walk.

(e) The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(3) A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

(b) an identification number;

(c) a date of expiration not to exceed six months from the date of issuance; and

(d) a facsimile of the Great Seal of the State of Utah.

(4) Upon application, a temporary removable windshield placard shall be issued.

(a) The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(b) Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

(c) The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(d) The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(5) Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-422.

(1) "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-422 and that issues a standard collegiate degree.

(2) "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

(1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

(2) Pursuant to Subsection 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, except as provided in Subsection 41-1a-411(3), "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

(c) Combinations of letters, words, or numbers that connote:

(i) any intoxicant or any illicit narcotic or drug;

(ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or

(iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.

(d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

(e)(i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:

(A) illegal activity;

(B) organized crime associations; or

(C) gang or gang terminology.

(iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

(4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

(a) translation from foreign languages;

(b) an upside down or reverse reading of the requested format; and

(c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

(5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection (2), the division shall again review the format.

(8) If the division determines pursuant to Subsection (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized

license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

R873-22M-41. Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.

(1) Subject to Subsection (3), an insurance company shall

receive a salvage certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a salvage vehicle;

(b) a copy of the check issued to the registered owner of the vehicle; and

(c) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(i) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(ii) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a salvage certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

R873-22M-42. Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5.

(1) Subject to Subsection (3), an insurance company shall receive a nonrepairable certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a nonrepairable vehicle; and

(b) a copy of the check issued to the registered owner of the vehicle; and

(c)(i) the properly endorsed certificate of title, or other evidence of ownership acceptable to the Motor Vehicle Division; or

(ii) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(A) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(B) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a nonrepairable certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

KEY: taxation, motor vehicles, aircraft, license plates

August 22, 2019

Notice of Continuation November 10, 2016

41-1a-102

41-1a-104

41-1a-108

41-1a-116

41-1a-211

41-1a-215

41-1a-214
41-1a-401
41-1a-402
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418
41-1a-419
41-1a-420
41-1a-421
41-1a-422
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1005
41-1a-1009
through
41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability

is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of

units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the

productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar

year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request

is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

- (a) the property owner's name;
- (b) the address of the property; and
- (c) the serial number of the property.

(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the

cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;
(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) For an individual commencing employment as an ad valorem personal property auditor/appraiser before April 15, 2019 to qualify for this designation, an individual must, by April 15, 2021:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) For an individual commencing employment as an ad valorem personal property auditor/appraiser on or after April 15, 2019 to qualify for this designation, an individual must within 24 months of commencing that employment:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(c) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 6 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works

primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures

associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

- a) a detailed list of preconstruction cost data is supplied to the responsible agency;
- b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- a) The full cash value of the project expected upon completion.
- b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

- (a) 10 - Excavation-foundation
- (b) 30 - Rough lumber, rough labor
- (c) 50 - Roofing, rough plumbing, rough electrical, heating
- (d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(11) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures;

(i) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may

be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsections (2)(b) and (c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study

year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the

requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (A) documented actual cost of the new or used vehicle; or
- (B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (A) class 6 heavy and medium duty trucks;
- (B) class 13 heavy equipment;
- (C) class 14 motor homes;
- (D) class 17 vessels equal to or greater than 31 feet in length;

and

- (E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal

property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of

the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.
- (iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
18	72%
17	42%
16 and prior	11%

- (b) Class 2 - Computer Integrated Machinery.
 - (i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:
 - (A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
 - (B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
 - (C) The machine can perform multiple functions and is controlled by a programmable central processing unit.
 - (D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
 - (E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
 - (ii) Examples of property in this class include:
 - (A) CNC mills;
 - (B) CNC lathes;
 - (C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
 - (iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
18	91%
17	81%
16	70%
15	59%
14	48%
13	38%
12	25%
11 and prior	13%

- (c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
 - (i) Examples of property in this class include:
 - (A) office machines;
 - (B) alarm systems;
 - (C) shopping carts;
 - (D) ATM machines;
 - (E) small equipment rentals;
 - (F) rent-to-own merchandise;
 - (G) telephone equipment and systems;
 - (H) music systems;
 - (I) vending machines;

- (J) video game machines; and
- (K) cash registers.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	35%
14 and prior	18%

- (d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.
 - (i) Examples of property in this class include:
 - (A) furniture;
 - (B) bars and sinks;
 - (C) booths, tables and chairs;
 - (D) beauty and barber shop fixtures;
 - (E) cabinets and shelves;
 - (F) displays, cases and racks;
 - (G) office furniture;
 - (H) theater seats;
 - (I) water slides;
 - (J) signs, mechanical and electrical; and
 - (K) LED component of a billboard.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
18	92%
17	84%
16	74%
15	64%
14	55%
13	45%
12	34%
11	23%
10 and prior	12%

- (e) Class 6 - Heavy and Medium Duty Trucks.
 - (i) Examples of property in this class include:
 - (A) heavy duty trucks;
 - (B) medium duty trucks;
 - (C) crane trucks;
 - (D) concrete pump trucks; and
 - (E) trucks with well-boring rigs.
 - (ii) Taxable value is calculated by applying the percent good factor against the cost new.
 - (iii) Cost new of vehicles in this class is defined as follows:
 - (A) the documented actual cost of the vehicle for new vehicles; or
 - (B) 75 percent of the manufacturer's suggested retail price.
 - (iv) For state assessed vehicles, cost new shall include the value of attached equipment.
 - (v) The 2019 percent good applies to 2019 models purchased in 2018.
 - (vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
19	90%
18	71%
17	66%
16	61%

15	56%
14	51%
13	45%
12	40%
11	35%
10	30%
09	20%
08	15%
07	10%
06 and prior	4%

18	94%
17	87%
16	79%
15	71%
14	64%
13	56%
12	47%
11	38%
10	30%
09	21%
08 and prior	11%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

Examples of machinery and equipment include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:

- (I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
- (II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
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(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	91%
16	84%
15	78%
14	73%
13	68%
12	60%
11	54%
10	48%
09	42%
08	35%
07	28%
06	20%
05 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
18	62%
17	46%
16	21%
15	9%
14 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2019 model equipment purchased in 2018 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
18	49%
17	47%
16	44%
15	42%
14	39%
13	37%
12	35%
11	32%
10	30%
09	28%
08	25%
07	23%
06	20%
05 and prior	13%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
18	47%
17	34%
16	24%
15	15%
14 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboard (excluding LED component);
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;
- (G) underground fiber optic cable;
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of	Percent Good
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Acquisition of Acquisition Cost

18	96%
17	94%
16	89%
15	85%
14	82%
13	79%
12	73%
11	69%
10	64%
09	63%
08	59%
07	57%
06	51%
05	45%
04	38%
03	30%
02	23%
01	15%
00 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sailboats equal to or greater than 31 feet in length; and
- (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
 - (B) the documented actual cost of new or used property in this class.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
19	90%
18	67%
17	64%
16	62%
15	60%
14	57%
13	55%
12	53%
11	50%
10	48%
09	46%
08	43%
07	41%
06	39%
05	36%
04	34%
03	32%
02	29%

01	27%
00	25%
99	21%
98 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length
 (i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
18	95%
17	87%
16	81%
15	74%
14	67%
13	61%
12	55%
11	46%
10	40%
09	34%
08	27%
07	19%
06 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2019 percent good applies to 2019 models purchased in 2018.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
19	95%

18	85%
17	82%
16	78%
15	74%
14	69%
13	65%
12	61%
11	57%
10	53%
09	50%
08	46%
07	41%
06	36%
05	30%
04	25%
03 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
18	94%
17	88%
16	82%
15	77%
14	71%
13	65%
12	59%
11	54%
10	48%
09	42%
08	36%
07 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical,

functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- (i) Examples of property in this class include:
 - (A) aircraft parts manufacturing jigs and dies;
 - (B) aircraft parts manufacturing molds;
 - (C) aircraft parts manufacturing patterns;
 - (D) aircraft parts manufacturing taps and gauges; and
 - (E) aircraft parts manufacturing test equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	36%
14	19%
13 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

- (i) Examples of property in this class include:
 - (A) electrical power generators; and
 - (B) control equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
18	97%
17	95%
16	92%
15	90%
14	87%
13	84%
12	82%
11	79%
10	77%
09	74%
08	71%
07	69%
06	66%
05	64%
04	61%
03	58%
02	56%
01	53%
00	51%
99	48%
98	45%
97	43%
96	40%
95	38%
94	35%
93	32%
92	30%
91	27%
90	25%
89	22%
88	19%
87	17%
86	14%
85	12%
84 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

- (i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
18	75%
17	50%
16	25%
15 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2019.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

- (a) the owner of record of the property;
 - (b) the property parcel, account, or serial number;
 - (c) the location of the property;
 - (d) the tax year in which the exemption was originally granted;
 - (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
 - (f) the name and address of any person or organization conducting a business for profit on the property;
 - (g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
 - (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
 - (i) the name and address of the lessor of property described in Subsection (2)(h);
 - (j) the signature of the owner of record or the owner's authorized representative; and
 - (k) any other information the county may require.
- (3) The annual statement shall be filed:
- (a) with the county legislative body in the county in which the property is located;
 - (b) on or before March 1; and
 - (c) using:
 - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - (ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of

all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
- (ii) storage facilities for railroad operations;
- (iii) communication facilities; and
- (iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
- (ii) grocery stores;
- (iii) apartments;
- (iv) residences; and
- (v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the

determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or

harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;
2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and
3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.
2. "Fleet rail car market value" means the sum of:
 - a)(1) the yearly acquisition costs of the fleet's rail cars;
 - (2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Property Valuation Guides and Schedules; and
 - b) the sum of betterments by year.
 - (1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.
 - (2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.
3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of-service rail cars.
4. a) "Out-of-service rail cars" means rail cars:
 - (1) out-of-service for a period of more than ten consecutive hours; or
 - (2) in storage.
- b) Rail cars cease to be out-of-service once repaired or removed from storage.
- c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.
5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.
6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.
7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.
2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

- (iv) listings in official government publications or other correspondence;
- (v) driver's license;
- (vi) voter registration; and
- (vii) tax rolls;
- (k) location of public schools attended by the individual or the individual's dependents;
- (l) the nature and payment of taxes in other states;
- (m) declarations of the individual:
 - (i) communicated to third parties;
 - (ii) contained in deeds;
 - (iii) contained in insurance policies;
 - (iv) contained in wills;
 - (v) contained in letters;
 - (vi) contained in registers;
 - (vii) contained in mortgages; and
 - (viii) contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.
 (a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (A) the owner of record of the property;
- (B) the property parcel number;
- (C) the location of the property;
- (D) the basis of the owner's knowledge of the use of the property;
- (E) a description of the use of the property;
- (F) evidence of the domicile of the inhabitants of the property;

and
 (G) the signature of all owners of the property certifying that the property is residential property.

- (ii) The application under Subsection (6)(g)(i) shall be:
 - (A) on a form provided by the county; or
 - (B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2019 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to

the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	677
2) Cache	582
3) Carbon	451
4) Davis	719
5) Emery	427
6) Iron	683
7) Kane	357
8) Millard	674
9) Salt Lake	616
10) Utah	641
11) Washington	557
12) Weber	694

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	595
2) Cache	497
3) Carbon	359
4) Davis	633
5) Duchesne	417
6) Emery	344
7) Grand	332
8) Iron	599
9) Juab	380
10) Kane	275
11) Millard	592
12) Salt Lake	529
13) Sanpete	460
14) Sevier	484
15) Summit	393
16) Tooele	381
17) Utah	554
18) Wasatch	416
19) Washington	475
20) Weber	608

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	514
2) Box Elder	468
3) Cache	376
4) Carbon	239
5) Davis	509
6) Duchesne	292
7) Emery	216
8) Garfield	181
9) Grand	210
10) Iron	475
11) Juab	256
12) Kane	152
13) Millard	468
14) Morgan	328

15)	Piute	285
16)	Rich	152
17)	Salt Lake	403
18)	San Juan	146
19)	Sanpete	338
20)	Sevier	360
21)	Summit	269
22)	Tooele	255
23)	Uintah	316
24)	Utah	425
25)	Wasatch	289
26)	Washington	349
27)	Wayne	281
28)	Weber	483

TABLE 6
Meadow IV

1)	Beaver	218
2)	Box Elder	216
3)	Cache	223
4)	Carbon	113
5)	Daggett	134
6)	Davis	226
7)	Duchesne	143
8)	Emery	118
9)	Garfield	89
10)	Grand	115
11)	Iron	225
12)	Juab	130
13)	Kane	93
14)	Millard	166
15)	Morgan	168
16)	Piute	163
17)	Rich	90
18)	Salt Lake	198
19)	Sanpete	167
20)	Sevier	172
21)	Summit	173
22)	Tooele	158
23)	Uintah	177
24)	Utah	214
25)	Wasatch	179
26)	Washington	195
27)	Wayne	147
28)	Weber	259

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	424
2)	Box Elder	387
3)	Cache	292
4)	Carbon	153
5)	Daggett	162
6)	Davis	425
7)	Duchesne	205
8)	Emery	134
9)	Garfield	97
10)	Grand	127
11)	Iron	389
12)	Juab	170
13)	Kane	68
14)	Millard	380
15)	Morgan	243
16)	Piute	199
17)	Rich	70
18)	Salt Lake	312
19)	San Juan	66
20)	Sanpete	254
21)	Sevier	276
22)	Summit	185
23)	Tooele	174
24)	Uintah	234
25)	Utah	341
26)	Wasatch	206
27)	Washington	263
28)	Wayne	198
29)	Weber	395

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	47
2)	Box Elder	79
3)	Cache	100
4)	Carbon	42
5)	Davis	44
6)	Duchesne	47
7)	Garfield	41
8)	Grand	42
9)	Iron	42
10)	Juab	44
11)	Kane	41
12)	Millard	40
13)	Morgan	55
14)	Rich	41
15)	Salt Lake	47
16)	San Juan	45
17)	Sanpete	47
18)	Summit	41
19)	Tooele	45
20)	Uintah	47
21)	Utah	43
22)	Wasatch	41
23)	Washington	41
24)	Weber	68

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	586
2)	Box Elder	634
3)	Cache	586
4)	Carbon	586
5)	Davis	639
6)	Duchesne	586
7)	Emery	586
8)	Garfield	586
9)	Grand	586
10)	Iron	586
11)	Juab	586
12)	Kane	586
13)	Millard	586
14)	Morgan	586
15)	Piute	586
16)	Salt Lake	586
17)	San Juan	586
18)	Sanpete	586
19)	Sevier	586
20)	Summit	586
21)	Tooele	586
22)	Uintah	586
23)	Utah	644
24)	Wasatch	586
25)	Washington	693
26)	Wayne	586
27)	Weber	639

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	14
2)	Box Elder	50
3)	Cache	70
4)	Carbon	13
5)	Davis	13
6)	Duchesne	16
7)	Garfield	13
8)	Grand	13
9)	Iron	13
10)	Juab	13
11)	Kane	13
12)	Millard	12
13)	Morgan	23
14)	Rich	13
15)	Salt Lake	15
16)	San Juan	17

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

17) Sanpete	16
18) Summit	13
19) Tooele	13
20) Uintah	16
21) Utah	13
22) Wasatch	13
23) Washington	12
24) Weber	38

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze I. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	65
2) Box Elder	63
3) Cache	60
4) Carbon	45
5) Daggett	45
6) Davis	52
7) Duchesne	59
8) Emery	61
9) Garfield	66
10) Grand	67
11) Iron	64
12) Juab	56
13) Kane	65
14) Millard	65
15) Morgan	57
16) Piute	77
17) Rich	56
18) Salt Lake	61
19) San Juan	63
20) Sanpete	54
21) Sevier	56
22) Summit	62
23) Tooele	61
24) Uintah	69
25) Utah	56
26) Wasatch	45
27) Washington	56
28) Wayne	75
29) Weber	60

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	20
2) Box Elder	20
3) Cache	19
4) Carbon	13
5) Daggett	12
6) Davis	16
7) Duchesne	16
8) Emery	18
9) Garfield	20
10) Grand	19
11) Iron	19
12) Juab	16
13) Kane	21
14) Millard	21
15) Morgan	18
16) Piute	22
17) Rich	17
18) Salt Lake	18
19) San Juan	21
20) Sanpete	15
21) Sevier	15
22) Summit	17
23) Tooele	17
24) Uintah	24
25) Utah	20
26) Wasatch	14
27) Washington	18
28) Wayne	24
29) Weber	17

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	15
2) Box Elder	14
3) Cache	12
4) Carbon	11
5) Daggett	10
6) Davis	11
7) Duchesne	12
8) Emery	12
9) Garfield	13
10) Grand	13
11) Iron	13
12) Juab	12
13) Kane	13
14) Millard	13
15) Morgan	11
16) Piute	15
17) Rich	11
18) Salt Lake	13
19) San Juan	14
20) Sanpete	12
21) Sevier	12
22) Summit	12
23) Tooele	12
24) Uintah	16
25) Utah	12
26) Wasatch	11
27) Washington	11
28) Wayne	15
29) Weber	12

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1) Beaver	5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	5
10) Grand	5
11) Iron	5
12) Juab	5
13) Kane	5
14) Millard	5
15) Morgan	5
16) Piute	5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	5
24) Uintah	5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	5
29) Weber	5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real

property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

- (i) the name of the taxpayer awarded the judgment;
- (ii) the appeal number of the judgment; and
- (iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

- (i) a copy of all judgment levy newspaper advertisements required;
- (ii) the dates all required judgment levy advertisements were published in the newspaper;
- (iii) a copy of the final resolution imposing the judgment levy;
- (iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and
- (v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility

Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle;
- or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.
2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county

shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

- a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

- b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;
 2. watercraft required to be registered with the state;
 3. recreational vehicles required to be registered with the state;
- and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of

equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a)(i) through (iii).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional

obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the

spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

- (I) airline under Section 59-2-102;
- (II) air charter service under Section 59-2-102; and
- (III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection

(6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's

claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Subsection 59-2-1004(3)(a) if any of the following conditions apply:

(a) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject;

and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant

to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

- (i) class;
- (ii) property type;
- (iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

R884-24P-74. Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201.

(1) A mining claim shall be assessed by the county in which the mining claim is located if the commission determines that the mining claim is used for other than mining purposes.

(2) The owner of a mining claim may request that the mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a copy of the title to the mining claim;

(b) certification that all owners of the mining claim seek assessment by the county in which the mining claim is located;

(c) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(d) evidence that the mining claim is used for other than mining purposes.

(3) A county may request that a mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(b) evidence that the mining claim is used for other than mining purposes.

(4) Evidence that a mining claim is used for other than mining purposes is dependent on specific facts and circumstances and includes:

(a) evidence that the mining claim will be actively and solely used for other than mining purposes for more than a temporary period of time;

(b) evidence that a restrictive covenant or conservation

easement prohibiting mining activities on the mining claim is recorded in the county where the mining claim is located;

(c) evidence that local zoning ordinances prohibit mining activities on the mining claim; or

(d) in the case where the mining claim has been used for mining activities at any time, the mining claim has been reclaimed as evidenced by the return of the mine reclamation bond to the owner of the mining claim by the Division of Oil, Gas, and Mining.

59-2-1703

KEY: taxation, personal property, property tax, appraisals
August 19, 2019 Art. XIII, Sec 2
Notice of Continuation November 10, 2016

9-2-201
 11-13-302
 41-1a-202
 41-1a-301
 59-1-210
 59-2-102
 59-2-103
 59-2-103.5
 59-2-104
 59-2-201
 59-2-210
 59-2-211
 59-2-301
 59-2-301.3
 59-2-302
 59-2-303
 59-2-303.1
 59-2-305
 59-2-306
 59-2-401
 59-2-402
 59-2-404
 59-2-405
 59-2-405.1
 59-2-406
 59-2-508
 59-2-514
 59-2-515
 59-2-701
 59-2-702
 59-2-703
 59-2-704
 59-2-704.5
 59-2-705
 59-2-801
 59-2-918 through 59-2-924
 59-2-1002
 59-2-1004
 59-2-1005
 59-2-1006
 59-2-1101
 59-2-1102
 59-2-1104
 59-2-1106
 59-2-1107 through 59-2-1109
 59-2-1113
 59-2-1115
 59-2-1202
 59-2-1202(5)
 59-2-1302
 59-2-1303
 59-2-1308.5
 59-2-1317
 59-2-1328
 59-2-1330
 59-2-1347
 59-2-1351
 59-2-1365

R926. Transportation, Program Development.**R926-17. Road Usage Charge Program.****R926-17-1. Purpose and Authority.**

(1) Purpose. This rule is to administer the State's Road Usage Charge Program.

(2) Authority. Utah Code Section 72-1-213.1 grants the Department authority to promulgate this rule.

R926-17-2. Definitions.

(1) "Account manager" means an entity under contract with the Department to operate and manage the road usage charge program on its behalf.

(2) "Alternative fuel vehicle" means the same as that term is defined in Section 41-1a-102.

(3) "Chargeable miles" means the number of miles for which the RUC participant will be charged under the program parameters in place at the time the miles are driven.

(4) "Department" means the Utah Department of Transportation.

(5) "DMV" means the Utah Division of Motor Vehicles.

(6) "Flat fee" means the additional registration fee applied to alternative fuel vehicles as defined in Utah Code Subsections 41-1a-1206(1)(h) and 1206(2)(b).

(7) "Payment period" means the interval during which an owner/lessee is required to report mileage and pay the appropriate RUC fee according to the terms of the program.

(8) "Program" means the RUC program established and described in this section.

(9) "RUC" means "road usage charge".

(10) "RUC fee" means the accrued amount owed to an account manager. It is calculated as the number of chargeable miles driven multiplied by the RUC rate.

(11) "RUC participant" means the owner or lessee of an alternative fuel vehicle that is enrolled in the program.

(12) "RUC rate" means the amount of money per mile driven that RUC participants are required to pay, and which has been approved by the Transportation Commission to be used in the program.

(13) "Value-added services" means amenities that an account manager may want to offer RUC participants, but which are ancillary to the core RUC purpose of collecting and reporting miles driven.

R926-17-3. Enrollment, Voluntary Withdrawal and Removal Processes and Terms.

(1) The Department will coordinate with the DMV and the account manager to notify owners or lessees of alternative fuel vehicles that they are eligible to enroll in the program as an alternative to paying the flat fee applicable to their vehicle.

(2) The Department will provide a means of directing owners/lessees who want to enroll in the program to an account manager under contract with the Department that will manage all aspects of enrollment in the program.

(3) Owners/lessees who want to enroll in the program must submit vehicle information that includes the license plate number and vehicle identification number (VIN) to the account manager for verification that the participant's vehicle is eligible for enrollment in the program.

(4) RUC participants may withdraw a vehicle from the program at any time.

(5) RUC participants who withdraw a vehicle prior to full completion of the current annual registration cycle must pay the flat fee amount applicable to that vehicle, less any RUC fees paid to date during that registration cycle.

(6) The process for withdrawing from the program prior to completion of a full registration cycle is as follows:

(a) RUC participant notifies the account manager that they wish to withdraw from the program.

(b) RUC participant fulfills any terms in their user agreement

related to return of electronic mileage collection devices.

(7) RUC participants who complete a full registration cycle prior to withdrawing from the program, and have accrued a RUC fee amount less than the applicable annual flat fee, will not be required as a condition of withdrawal to pay the difference between the flat fee amount and the RUC fees they have already accrued.

(8) RUC participants who withdraw after completing their full registration cycle will revert to paying the flat fee to the DMV until such time as they opt into the RUC program again.

(9) Involuntary removal of RUC participants from the program is addressed in Section R926-17-8.

R926-17-4. RUC Participant Payment Methods, Periods, and Procedures.

(1) RUC participants must provide electronic payment information and set up a prepaid wallet at enrollment. The wallet value will decrease as the value of miles accrues against the balance. A nominal amount, which will be agreed to by the RUC participant and account manager and stated in the user agreement, will be added by the RUC participant to the wallet once the balance drops below a predetermined minimum threshold.

(2) Only electronic payments will be accepted.

(3) Account managers will send RUC participants a monthly statement showing at a minimum miles driven, RUC fees accrued, and amount of money added to the wallet during the previous month.

(4) Account managers will cease accruing RUC fees against a vehicle once the cumulative amount accrued for the current registration cycle is equal to the flat fee applicable to that vehicle type. Fee accrual will resume at the beginning of the next registration cycle if the RUC participant remains in the program.

(5) Once a RUC Participant's total accrued RUC fee for the year is equal to their flat fee, the RUC Participant will no longer accrue additional RUC fees until the beginning of their new registration cycle if they remain in the program.

(6) Penalties for violation of terms and conditions, if applicable, may still result in accrual of fees against a RUC participant's account even after the annual mileage cap has been reached.

R926-17-5. Mileage Reporting Mechanism Standards.

(1) Account managers may offer various reporting mechanisms to RUC participants for collection of their mileage. All mechanisms must be approved by the Department prior to use by account managers.

(2) Such mechanisms may include but are not limited to devices installed in cars, smartphone applications, embedded telematics, and odometer image capture. For mechanisms such as OBD-II devices and embedded telematics that may be able to support mileage collection either through location tracking or a simple report of the odometer reading, the Department may dictate its preferences through account manager contract terms.

(3) Mileage reporting mechanisms will be capable of automatically transmitting mileage data directly to an account manager through wireless means. The program may not provide for any manual reporting of mileage by RUC participants.

(4) The Department may dictate mileage aggregation and reporting frequencies (e.g. hourly, daily, monthly) through account manager contract terms.

R926-17-6. Privacy and Data Sharing Processes and Procedures.

(1) All aspects of program operations will comply with the statutes related to privacy found in Utah Code Sections 63G-2-305 and 77-23c-102.

(2) An account manager must explain activities involving collection and storage of location data to RUC participants as part of the enrollment process.

(3) User agreements between account managers and RUC

participants, must be approved by the Department prior to use and must require explicit consent for collection and storage of RUC participants' location data.

(4) RUC participants will be able to view their data being collected and stored by the account manager. They may also dispute mileage charges that they consider to be erroneous.

(5) RUC participants' location data and personal information is protected from public disclosure by the Government Records Access and Management Act (GRAMA).

R926-17-7. Security Processes and Procedures.

The account manager will process all card payment data and transactions in accordance with the Payment Card Industry Data Security Standard (PCI DSS), which applies to the electronic payment card industry as a whole. Automated clearing house payment data and transactions will be processed according to the rules published by the National Automated Clearing House Association (NACHA), which apply to the electronic payment card industry as a whole.

R926-17-8. User Agreements Between Account Managers and RUC Participants.

(1) The Department must approve user agreements used by account managers to enroll RUC participants prior to usage of those agreements.

(2) The user agreement will clearly explain location tracking, data retention, and privacy protection components of the program. It will also require explicit consent on the part of the participant to accept any terms related to tracking and retention.

(3) The user agreement will include but is not limited to the following components:

(a) Mileage reporting mechanism to be used for the vehicle being enrolled and commitment from the RUC participant to keep the mechanism operable at all times so that no interruptions in data collection and transmission occur.

(b) Electronic payment mechanism chosen by the RUC participant, consent to have a bank account or credit card debited when the wallet balance drops below a defined minimum threshold, and commitment to keep payment information current while enrolled in the program.

(c) Refund procedures for situations where a RUC participant completes a full registration cycle within the program but does not accrue enough mileage charges to consume the entire flat fee, thus leaving a positive wallet balance.

(d) Requirements, if any, for return of mileage reporting devices to the account manager after a RUC participant is no longer enrolled.

(e) Length of time that raw location data will be retained by the account manager.

(f) Information about how data may be aggregated, anonymized, or shared.

(g) Process for RUC participants to view their collected data and lodge a dispute if they believe charges have accrued to their accounts erroneously.

(h) Processes and consequences of withdrawal from the program both prior to and after full completion of the current annual registration cycle applicable to the enrolled vehicle, as detailed in Section R926-17-3.

(4) The user agreement will explain penalties associated with violation of its terms. Failure to comply with terms such as payment of RUC fees, return of devices (or payment for lost devices), or intentional tampering with mileage reporting mechanisms may result in the following enforcement actions:

(a) An initial warning about the violation and steps for becoming compliant.

(b) A penalty fee, which will be agreed to by the RUC participant and account manager and stated in the user agreement, will be assessed to the RUC participant's electronic wallet if a warning doesn't result in compliance.

(c) Billing of the RUC participant's electronic wallet for all outstanding fees owed and removal from the program if compliance is still not achieved after penalty assessment.

(d) Notification by the account manager to the DMV that a former RUC participant has unpaid fees owed to the account manager, and subsequent placement of a registration hold by the DMV on the formerly enrolled vehicle if the RUC participant's electronic payment information is invalid or does not have enough balance to successfully pay the total fees owed. Former RUC participants with registration holds assessed will be required to successfully settle their RUC account with the account manager prior to having the hold released by the DMV and being able to register the vehicle again.

R926-17-9. Contractual Terms Between the Department and Account Managers.

(1) The Department will provide account manager oversight through a contractual relationship governing what the account manager is authorized to do on behalf of the Department.

(2) Contracts between the Department and account managers will contain, at a minimum, guidelines for the following:

(a) RUC participant enrollment, withdrawal, and removal processes.

(b) Structure and content of user agreements between account managers and RUC participants.

(c) Descriptions of mileage reporting mechanisms that account managers are authorized to offer to RUC participants.

(d) Payment collection, transaction processing, and revenue remittance protocols.

(e) Stipulation that any value-added services offered by an account manager must be approved by the Department prior to use by RUC participants.

(f) Privacy and security protection processes, including parameters for data collection, retention, destruction, anonymization, aggregation, and sharing.

(g) System testing and certification approach.

(h) Customer service level expectations and performance standards.

(i) Requirements for coordination and interfacing with the DMV.

(j) Reporting of data collected through the program.

(k) Audit procedures for verifying account manager performance in areas such as privacy protection, data destruction, data collection accuracy, and remittance of funds to the State.

(l) Remedies available to the Department if an account manager fails to fulfill contractual terms.

KEY: road usage charge (RUC), alternative fuel vehicles, RUC program
August 26, 2019

72-1-213.1

R940. Transportation Commission, Administration.**R940-1. Establishment of Toll Rates.****R940-1-1. Purpose and Authority.**

The purpose of this rule is to establish procedures for the setting of toll rates. This rule is authorized by Utah Code Section 72-6-118.

R940-1-2. Definitions.

- (1) "Commission" means the Transportation Commission, which is created in Utah Code Section 72-1-301;
- (2) "Department" means the Utah Department of Transportation, which is created in Section 72-1-101;
- (3) "Toll" means the toll or user fees that the operator of a motor vehicle must pay for the privilege of driving on a tollway, including the toll or user fees that the operator of a single-occupant motor vehicle must pay for the privilege of driving on a high occupancy toll lane.
- (4) "Tollway" has the meaning described in Section 72-6-118.
- (5) "Tollway development agreement" has the meaning described in Utah Code Section 72-6-202.

R940-1-3. Setting Toll Rates.

- (1) The Commission shall be responsible for setting toll rates on state highways as specified in this rule.
- (2) Toll rates for facilities included in a tollway development agreement shall be set in accordance with the terms and conditions of the tollway development agreement. Terms and conditions relating to toll rates are required to be presented to the Commission in connection with award of the tollway development agreement, and any modifications to such terms and conditions will be considered a substantial modification or amendment requiring Commission approval under Section R940-1-3.
- (3) The Commission may, in its sole discretion, increase the toll rates for a facility subject to a tollway development agreement above the amount allowed under the tollway development agreement.

R940-1-4. Toll Rates.

- (1) The Commission will set tolls at a rate designed to keep traffic freely flowing in each payment zone. The Department will calculate the optimal toll rate for each payment zone and create a schedule of optimal toll rates. The Department will submit the schedule of optimal toll rates to the Commission for prior approval. The Department will review the schedule of optimal toll rates as often as necessary to maintain the optimal traffic flow in each payment zone, but at least every 6 months. The Department will post the schedule of optimal toll rates on its Internet web site, which will be accessible by the public at: [http://www.udot.utah.gov/Payment Zone Toll Schedule/](http://www.udot.utah.gov/Payment_Zone_Toll_Schedule/). The toll rate in effect shall be posted on variable message signs at each payment zone.
- (2) The maximum toll rate is \$4.00 per payment zone.
- (3) Toll rates for roads that are subject to a tollway development agreement shall be set in the tollway development agreement.

R940-1-5. Tollway Restricted Special Revenue Fund.

- (1) Pursuant to state law, tolls collected by the department and certain funds received by the department through a tollway development agreement are deposited in the Tollway Special Revenue Fund established in Section 72-2-120.
- (2) Monies from the fund may be used pursuant to Section 72-2-120.

KEY: transportation, tolls, high occupancy toll lanes, tollways
August 26, 2019 **72-2-120**
Notice of Continuation June 2, 2016 **72-6-118**

R940. Transportation Commission, Administration.**R940-8. Establishment of Road Usage Charge (RUC) Rates.****R940-8-1. Purpose and Authority.**

(1) The purpose of this rule is to establish procedures for setting road usage charge (RUC) rates in accordance with the RUC program established by Utah Code Section 72-1-213, and to set a RUC rate. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

(2) Authority for this rule is found in Utah Code Section 72-1-213.1.

R940-8-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Section 72-1-301;

(2) The "Department" means the Utah Department of Transportation, which is created in Utah Code Section 72-1-101;

(3) "RUC" means Road Usage Charge as designated pursuant to Section 72-1-213.

(4) "Rate" means the per-mile usage fee that the owner of a motor vehicle enrolled in the RUC program must pay.

R940-8-3. Responsibility for Setting RUC Rates.

(1) The Commission will be responsible for setting RUC rates as specified in this rule.

(2) The Commission may, at its sole discretion, change the RUC rate.

R940-8-4. Process of Setting RUC Rates.

(1) The Commission will consider the Department's recommendations for RUC rates.

(2) The Commission may consider relevant data and information from any reliable source to help it determine RUC rates.

R940-8-5. Depositing of Collected Funds.

(1) Pursuant to State law, RUC fees collected by the Department will be deposited in the Transportation Fund established by Utah Code Section 72-2-102, and subject to the calculation pursuant to Utah Code Section 72-2-107.

(2) Monies from the fund may be used to pay for costs of administering the RUC program, pursuant to Utah Code Section 72-1-213.

R940-8-6. Road Usage Charge Rate.

(1) The RUC rate is 1.5 cents per mile effective January 1, 2020.

(2) The RUC rate will adjust annually on January 1 equal to the percentage change during the previous fiscal year in the Consumer Price Index (CPI), as determined by the Utah Tax Commission for the per gallon motor fuel tax rate pursuant to 59-13-201.

(3) By November 1 of each year the Commission will obtain from the Tax Commission the CPI percentage. This CPI percentage will be applied to the RUC rate and the increase will be published by December 1 with the adjusted rate taking effect on January 1.

KEY: road usage charge (RUC), alternative fuel vehicles, RUC rates

August 26, 2019

72-1-213.1

R990. Workforce Services, Housing and Community Development.**R990-300. Evaluation Process for Plan for Moderate Income Housing Reports.****R990-300-1. Authority.**

This rule is authorized under Section 35A-8-803(3), which directs the Utah Department of Workforce Services, Housing and Community Development Division (HCDD) to make rules describing the evaluation process for moderate income housing reports.

R990-300-2. Purpose.

Pursuant to Section 35A-8-803(1) HCDD will advise political subdivisions of serious housing problems existing within their jurisdiction that require concerted public action for solution; assist political subdivisions in defining housing objectives and preparing for adoption of a five-year action plan designed to accomplish housing objectives within their jurisdiction; and, for entities required to submit an annual moderate income housing report to the Department as described in Sections 10-9a-408 and 17-27a-408, assist in the creation of the reports and evaluate the reports for the purposes of Sections 72-2-124(5) and (6).

R990-300-3. Definitions.

Terms used in these rules are defined in Sections 10-9a-103 and 17-27a-103. In addition:

- (1) "Annual moderate income housing reporting form" means a form for annually reporting progress of the moderate-income housing element of the general plan.
- (2) "Plan for moderate income housing" means a written document adopted by an entity's legislative body that includes:
 - (a) an estimate of the existing supply of moderate-income housing located within the entity;
 - (b) an estimate of the need for moderate income housing in the entity for the next five years;
 - (c) a survey of total residential land use;
 - (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
 - (e) a description of entity's program to encourage an adequate supply of moderate income housing.

R990-300-4. Entities Required to Report.

Entities required to submit an annual report are described in Sections 10-9a-401 and 17-27a-401.

R990-300-5. Evaluation Process for Plan for Moderate Income Housing.

(1) On or before December 1, 2019, an entity identified in Section 10-9a-401(3)(b) or Section 17-27a-401(3)(b) shall amend the general plan to comply with the respective Section and submit the plan for moderate income housing to HCDD as provided in Sections 10-9a-408 and 17-27a-408. A plan submitted to HCDD will be reviewed to ensure the following are included in the plan:

- (a) Updated 5-year estimates of moderate-income housing needs.
- (b) The moderate-income housing element and its implementation, based on three strategic affordable housing development policies that address the following:
 - (i) The strategic policy goal the entity selected for inclusion in the moderate-income housing element of its general plan, as described in Sections 10-9a-403(2)(b) and 17-27a-403(2)(b).
 - (ii) The specific outcomes the goal intends to accomplish.
 - (iii) A description of how the entity will monitor its annual progress toward achieving the goal.
 - (iv) A description of the resources the entity must allocate to complete this goal.
 - (v) A description of the barriers, if any, the entity is encountering in working toward the goal.
- (c) For an entity that has a fixed guideway public transit

station, in addition to the three strategies in R990-300-5(1)(b), the implementation either:

- (i) encourages higher density or moderate-income residential development near major transit investment corridors, or
- (ii) eliminates or reduces parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities.

(2) Beginning December 1, 2020 and annually thereafter, the legislative body of each entity described in Sections 10-9a-401 and 17-27a-401 shall complete an annual moderate income housing reporting form and submit the complete form to HCDD.

(a) HCDD will review the plan's effectiveness in achieving the entity's strategic policy goal, based on the parameters the entity has selected to define success.

(b) HCDD will review each reporting form for completeness and compliance with Sections 10-9a-403, 10-9a-408, 17-27a-403 and 17-27a-408.

(3) After reviewing a plan, HCDD will provide the entity a copy of the review.

(4) Additional planning requirements are detailed in Section 10, Part 9a and Section 17, part 27a. Certain planning requirements are not part of the plan for moderate income housing and are not subject to annual reporting to HCDD.

R990-300-6. Evaluation Process for Plan for Moderate Income Housing.

In accordance with Section 72-2-124, HCDD will communicate compliance with the annual report requirements as described in Sections 10-9a-408 or 17-27a-408 to the Department of Transportation in conjunction with the prioritization process timeline.

**KEY: moderate income housing reports
August 21, 2019**

**35A-8-803
10-9a-408
17-27a-408**