

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Editor

The *Utah State Bulletin* (*Bulletin*) is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.state.ut.us/>

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## EDITOR'S NOTE

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### NOTICE OF PUBLICATION ERROR IN THE APRIL 15, 1999, *UTAH STATE BULLETIN*

In the April 15, 1999, issue of the *Utah State Bulletin* (99-8, pages 17 and 63), there is an error regarding the dates that appear on the introductory pages for NOTICES OF PROPOSED RULES and NOTICES OF CHANGES IN PROPOSED RULES. The dates indicate the opening and closing of filings windows for a particular issue of the *Bulletin*. The dates that appear were for a previous *Bulletin*. The correct dates are as follows: the April 15, 1999, issue contains filings received by the Division between March 16, 1999, at 12:00 a.m. and April 1, 1999, at 11:59 p.m. The end of mandatory public comment is May 17, 1999. The last possible effective date is August 13, 1999. These dates apply for both the proposed rules and the changes in proposed rules.

*Questions regarding this error to the Utah State Bulletin may be directed to: Nancy L. Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City UT 84114-1007; Phone: (801) 538-3218; FAX: (801) 538-1773; or E-mail: [asdomain.asitmain.nlancast@email.state.ut.us](mailto:asdomain.asitmain.nlancast@email.state.ut.us).*

**End of the Editor's Notes Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 2, 1999, 12:00 a.m., and April 15, 1999, 11:59 p.m., are included in this, the May 1, 1999, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [example]). Rules being repealed are completely struck out. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least June 1, 1999. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through August 29, 1999, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page.**

Commerce, Real Estate  
**R162-2-2**  
 Licensing Procedure

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 21967  
 FILED: 04/15/1999, 12:54  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify the requirement for experience to qualify for a broker's license must be acquired while the person is a licensed real estate sales agent.

SUMMARY OF THE RULE OR CHANGE: The word "licensed" is added to clarify that the experience that a broker applicant claims must be experienced gained while licensed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This proposed rule change further identifies the fact that real estate experience gained towards a broker's license needs to be accomplished as a real estate sales agent. Since this requirement does not involve the state budget in any way, there will be no impact on the state budget.

❖LOCAL GOVERNMENTS: This proposed rule change further identifies the fact that real estate experience gained towards a broker's license needs to be accomplished as a real estate sales agent. Since this requirement does not involve the local government in any way, there will be no impact on the budget of any local government.

❖OTHER PERSONS: This requirement will assure that each broker applicant will have had experience while working under the supervision of a licensed broker and will thereby be more qualified when the broker's license is received.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons applying for a brokers license must already have been licensed and therefore there will be no fiscal impact upon them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only change proposed by this rule is to include the single word "licensed" when describing the type of real estate experience required in order for a real estate sales agent to qualify to apply for licensure as a principal real estate broker. The rule change assures that one seeking licensure as a broker will have had experience working for a broker. The proposed rule change will have no impact on the state budget or upon local governments. The impact, if any, upon the profession will be to require persons seeking a broker's license to first obtain licensed experience in the real estate industry. Since unlicensed experience is always suspect and not acceptable for qualifying experience, only licensed real estate sales

agents can qualify for upgrading to a broker's license and there would therefore be no fiscal impact upon licensed practitioners by adding the clarifying word to the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce  
 Real Estate  
 Second Floor, Heber Wells Building  
 160 East 300 South  
 PO Box 146711  
 Salt Lake City, UT 84114-6711, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

**R162. Commerce, Real Estate.**

**R162-2. Exam and License Application Requirements.**

**R162-2-2. Licensing Procedure.**

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

2.2.3. The non-refundable fees which will include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, he may apply to the Division for a waiver of all or part of the educational requirement.

2.2.4.1. Candidates for the license of sales agent will successfully complete 90 classroom hours of approved study in principles and practices of real estate. Experience will not satisfy the education requirement. Membership in the Utah State Bar will waive this requirement.

2.2.4.2. Candidates for the license of associate broker or principal broker will successfully complete 120 classroom hours of approved study consisting of at least 24 classroom hours in brokerage management, 24 classroom hours in advanced appraisal, 24 classroom hours in advanced finance, 24 hours in advanced property management and 24 classroom hours in advanced real

estate law. Experience will not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education.

2.2.5. The principal broker and associate broker applicant will submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points will be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.

TABLE I - REAL ESTATE TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

COMMERCIAL

(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL

(a) Each unit managed	.25 pt/month
-----------------------	--------------

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month
--	------------

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.

2.2.8. An applicant previously licensed in another state will provide a written record of his license history from that state and documentation of disciplinary action, if any, against his license.

2.2.9. Determining fitness for licensure. The Commission and the Division will consider information necessary to determine whether an applicant meets the requirements of honesty, integrity, truthfulness, reputation and competency, which shall include the following:

2.2.9.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;

2.2.9.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;

2.2.9.3. Whether a civil judgement has been entered against the applicant based on a real estate transaction, and whether the judgement has been fully satisfied;

2.2.9.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

2.2.9.5. Whether restitution ordered by a court in a criminal conviction has been fully satisfied;

2.2.9.6. Whether the probation in a criminal conviction or a licensing action has been completed and fully served; and

2.2.9.7. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

**KEY: real estate business**

**[April 23, 1998]1999**

**61-2-5.5**

**Notice of Continuation July 1, 1997**



**Commerce, Real Estate  
R162-6  
Licensee Conduct**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 21968

FILED: 04/15/1999, 12:54

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To assure that advertising rules also apply to advertising on the Internet,

to require that all advertising copy shows the name of the licensee's real estate brokerage on all advertising copy, and to include several new forms which have been approved by the Real Estate Commission.

SUMMARY OF THE RULE OR CHANGE: Advertising rules must be followed in all forms of advertising including Internet and e-mail. New versions of forms approved and in effect.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Because the licensees in the state of Utah purchase the standardized approved real estate forms from private vendors, there will be no impact on the state budget.

❖LOCAL GOVERNMENTS: Because the licensees in the state of Utah purchase the standardized approved real estate forms from private vendors, there will be no impact on the budget of any local government.

❖OTHER PERSONS: The newly approved forms will have to be produced and acquired but at the same cost as the old forms which were replaced. The rule changes were coordinated with industry groups and printing companies to minimize losses resulting from large inventories of outdated forms.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will be minimal to the printing companies and other distributors of the forms because the changes were coordinated with them to minimize losses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule change is to recognize the advancement of technology by extending the rules governing advertisement to the Internet and e-mail. The proposed rule changes also include new forms to replace current forms and update existing forms. There will be no fiscal impact from the proposed changes to either the state budget or local governments. Any impact upon the industry will be minimal since the changes have been coordinated with industry groups and printing companies to prevent losses from licensees being stuck with large inventories of outdated forms.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce  
Real Estate  
Second Floor, Heber Wells Building  
160 East 300 South  
PO Box 146711  
Salt Lake City, UT 84114-6711, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

## **R162. Commerce, Real Estate.**

### **R162-6. Licensee Conduct.**

#### **R162-6-1. Improper Practices.**

6.1.1. False devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not buy, sell, or lease or rent any real property as a principal, either directly or indirectly, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. A licensee will be considered to be a principal for the purposes of this rule if he is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied

by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6. If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9. If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token gifts. A licensee may give a gift valued at \$50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referral fees from lenders. A licensee may not receive a referral fee from a lender.

6.1.11. Failure to have written agency agreement. To avoid representing more than one party without the informed consent of all parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.16.3.1.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

#### **R162-6-2. Standards of Practice.**

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) ~~[June 12, 1996]~~ January 1, 1999, Real Estate Purchase Contract ~~[(mandated use of this form is January 1, 1997)]~~;

(b) ~~[October 1, 1988, Earnest Money Sales Agreement]~~ January 1, 1999 Real Estate Purchase Contract for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) ~~[June 12, 1996]~~ January 1, 1999, Addendum/Counteroffer to Real Estate Purchase Contract ~~[(mandated use of this form is January 1, 1997)]~~;

(g) ~~[June 12, 1996]~~ January 1, 1999, Seller Financing Addendum to Real Estate Purchase Contract ~~[(mandated use of this form is January 1, 1997)]~~;

(h) ~~[June 12, 1996]~~ January 1, 1999, Survey Addendum to Real Estate Purchase Contract [~~(mandated use of this form is January 1, 1997)~~];

(i) ~~[June 12, 1996]~~ January 1, 1999, Buyer Financial Information Sheet [~~(mandated use of this form is January 1, 1997)~~];

(j) ~~[November 22, 1996]~~ January 1, 1999, FHA/VA Loan Addendum to Real Estate Purchase Contract [~~(mandated use of this form is January 1, 1997)~~];

(k) ~~[June 12, 1996]~~ January 1, 1999, Assumption Addendum to Real Estate Purchase Contract [~~(mandated use of this form is January 1, 1997)~~];

(l) ~~[September 5, 1996]~~ January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;

(m) ~~[September 5, 1996]~~ January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The Earnest Money Sales Agreement for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.

6.2.4. Employee Licensee. A real estate licensee working as a regular salaried employee as defined in section 1 of these rules, who sells real estate owned by the employer or leases real estate

owned by the employer, may only do so and may only be compensated directly by the employer under one of the following conditions: (1) the licensee is a principal broker; (2) the employer has on its staff a principal broker with whom the licensee affiliates for sales or management transactions; or (3) the employer contracts with a principal broker so that all employed licensees are affiliated with and supervised by a principal broker.

6.2.5. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.5.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; and

6.2.5.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; and

6.2.5.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; and

6.2.5.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction.

6.2.5.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.6. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.6.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or

purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.7. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to his respective client(s) or any unrepresented parties, his agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.7.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.7.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.7.1, but shall substitute terms applicable for a rental transaction for the terms "buyer", "seller", "listing agent", and "selling agent".

6.2.7.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who he or she represents to another agent upon initial contact with the other agent.

6.2.8. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.9. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.9.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; and

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; and

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; and

(d) The broker did not participate in the violation; and

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.9.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.10. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.11. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom he is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.12. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to him by the principal broker with whom he is licensed.

6.2.13. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must obtain from the party who will pay the commission written consent that the inducement be offered.

6.2.14. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.

6.2.15. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Records' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.15.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.15.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.15.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing

prospects for real estate transactions, except as provided in R162-6.2.15.(a) above.

6.2.16. **Fiduciary Duties.** A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.16.1. **Duties of a seller's or lessor's agent.** A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.2. **Duties of a buyer's or lessee's agent.** A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.3. **Duties of a limited agent.** A principal broker and licensees acting on his behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to

buyer, or to lessor and lessee, are inherently contradictory. A principal broker and licensees acting on his behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.16.3.1. In order to obtain informed consent, the principal broker or a licensee acting on his behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; and

(b) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on his behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.16.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.16.4. **Duties of a sub-agent.** A principal broker and licensees acting on his behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

**KEY: real estate business**

**[April 23, 1998]1999**

**Notice of Continuation July 1, 1997**

**61-2-5.5**



**Commerce, Real Estate**  
**R162-9**  
**Continuing Education**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 21969  
 FILED: 04/15/1999, 12:54  
 RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** By statute, the Commission and the Division are required to approve the courses that may be taken to satisfy a licensee's continuing education requirement on renewal. Current rules specify that 3 of the 12 hours of continuing education must be in a "core" course specified by the Division. Generally, different courses are specified each year as "core" courses. This rule change would allow a principal broker or associate broker to count the Division's Trust Account Seminar as a "core" course once every three renewal cycles. To facilitate and expedite the process of certifying courses for continuing education, to broaden the range and types of courses which can be certified for continuing education, to make it easier for national providers of education to certify their courses without certifying them in every state in the country, to simplify the manner in which instructors demonstrate their teaching abilities, to assure that video courses are actually viewed by the student, and to prevent instructors from using the courses as a marketplace to sell personal sales products.

**SUMMARY OF THE RULE OR CHANGE:** Broadens the course content for continuing education and simplifies the procedures for submitting course and instructor applications.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-2-5.5

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The only course the Division of Real Estate directly provides for Utah licensees is the Real Estate Trust Account. A fee of \$5 per head is charged for the course. There will be slightly more income to the state if more licensees take this course to meet their "core" course requirement.

❖ **LOCAL GOVERNMENTS:** The Real Estate Trust Account is offered only to Utah real estate licensees. No local government is involved in the production of this course and there is, therefore, no impact on the budget of any local government.

❖ **OTHER PERSONS:** This rule change should save broker licensees money on their continuing education courses. Since the cost of the Division's Trust Account Seminar is only \$5, substantially cheaper than most educational offerings by private providers, accepting this course as a "core" course would result in lower continuing education costs for broker licensees. Counting this course as a "core" course should encourage more broker licensees to take the course. There may also be savings to the public if more broker licensees

take the course and learn how to appropriately handle and account for the client funds which are entrusted to them. This rule change should also make it substantially easier for licensees to obtain a larger variety of continuing education and may in fact lower the cost of the education in view of the relative ease national providers can certify their courses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Licensees will likely save money spent on continuing education due to the wider variety of acceptable course content, and a licensee would be able to choose the price range they desire.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The purpose of this proposed addition to the continuing education rules is to allow real estate brokers to credit the Trust Account Seminar provided by the Division of Real Estate towards meeting the core course continuing education requirements of the profession and to expand the continuing education available to licensees and make it easier for providers to certify their courses for acceptance in Utah and to simplify the manner in which instructors demonstrate their competence. The rule changes further prevent instructors from using courses to market their personal sales products. The amendment will increase the state budget by a negligible amount (\$5 every three years for participating brokers) and will not create any additional expense since the seminar is already part of the division's program. There will be no effect on local governments. Due to the low cost of acquiring this credit it will benefit brokers fiscally and will benefit both the brokers and the general public by increasing the competency of brokers in handling and accounting for client funds entrusted to them. The overall impact on the licensee will be positive due to an increase in sources and types of continuing education available, and the increased competition will assist the industry licensees to more readily choose education of the nature and price range the licensee desires.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce  
 Real Estate  
 Second Floor, Heber Wells Building  
 160 East 300 South  
 PO Box 146711  
 Salt Lake City, UT 84114-6711, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

**R162. Commerce, Real Estate.****R162-9. Continuing Education.****R162-9-1. Objective.**

9.1 Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Real Estate Commission's primary objective of protection of and service to the public.

9.1.1 A licensee renewing a sales agent or broker license shall be required to provide evidence of having taken 12 classroom hours of certified real estate education within the two-year period preceding the licensee's renewal date.

9.1.1.1 A minimum of three of the 12 hours must be taken in a "core" course, the subject of which will be ~~designed~~designated by the Division to keep a licensee current in changing practices and laws.

**R162-9-2. Education Providers.**

9.2. Continuing education providers may apply to the Division for certification of their courses.

9.2.1 Approved providers may include accredited colleges and universities, public or private vocational schools, national and state real estate related professional societies and organizations, real estate boards, and proprietary schools.

9.2.2 Those real estate education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide that criteria to the division of real estate for a one-time approval, may be granted certification of their courses with no further application being necessary.

9.2.3 Licensees may apply to the division for continuing education credit for a non-certified real estate course taken from a national provider that the licensee believes will improve his ability to better protect or serve the public.

9.2.3.1 A licensee may request approval of the course from the division and, for an appropriate fee, the division will review the merits of the non-certified course and determine whether the course meets the criteria for Utah real estate continuing education.

**R162-9-3. Course Certification Criteria.**

9.3 Courses submitted for certification shall have significant intellectual or practical content and shall serve to increase the professional competence of the licensee, thereby meeting the objective of the protection of and service to the public.

9.3.1 Three hours shall be comprised of "core course" curricula, the subjects of which will be determined by the division and the Real Estate Commission. The subject matter of these courses will be for the purpose of keeping a licensee current in changing practices and laws. These courses may be provided by the division or by private education providers but, in all cases, will have prior certification by the division.

9.3.1.1 Principal brokers and associate brokers may use the Division's Trust Account Seminar to satisfy the "core" course requirement once every three renewal cycles.

9.3.2 The remaining nine hours shall be in substantive areas dealing with the practice of real estate. Acceptable course criteria shall include the following:

9.3.[+]2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; accounting and taxation as applied to real property; estate building and portfolio management; closing statements; real estate mathematics;

9.3.[+]2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; real property exchanging; real estate legislative issues; real estate license law and administrative rules;

9.3.[+]2.3 Land development; land use, planning and zoning; construction; energy conservation;

9.3.[+]2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.3.[+]2.5 Fair housing; affirmative marketing; Americans with Disabilities Act;

9.3.[+]2.6 Real estate ethics.

9.3.2.7 Using the computer, the Internet, business calculators, and other technologies to enhance the licensee's service to the public.

9.3.2.8 Offerings concerning sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques, servicing your clients, or similar offerings.

9.3.2.9 Offerings in personal and property protection for the licensee and his clients.

9.3.[2]3 Non-acceptable course criteria shall include courses similar to the following:

9.3.[2]3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, [~~computer operation,~~]language report writing, advertising, or similar offerings;

9.3.[2]3.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings;[

~~—9.3.2.3 Offerings concerning sales promotion, including salesmanship, negotiation, sales psychology, selling techniques, or similar offerings;]~~

9.3.[2-4]3.3 Meetings held in conjunction with the general business of the licensee and his broker or employer, such as sales meetings, in-house staff or licensee training meetings;

9.3.[3]4 The minimum length of a course shall be one credit hour. A credit hour is defined as 50 minutes within a 60-minute time period.

**R162-9-4. Instructor Certification Criteria.**

9.4 Instructors for continuing education purposes will be evaluated and approved separately from the continuing education courses.

9.4.1 The instructor applicant must meet the same requirements as a certified preclicensing instructor as defined in R162-8.4.1; and

9.4.2 The instructor applicant must demonstrate knowledge of the subject matter by submission of proof of the following:

9.4.2.1 At least five years experience in a profession, trade or technical occupation in a field directly related to the course which the applicant intends to instruct; or

9.4.2.2 A bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

9.4.2.3 Any combination of at least five years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct, or[

~~9.4.2.4 Evidence of passing an instructor's examination approved by the Division.]~~

9.4.3 The instructor applicant must demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

9.4.3.1 A state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

9.4.3.2 A professional teaching designation from the National Association of Realtors or the Real Estate Educators Association; or

9.4.3.3 Evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

#### **R162-9-5. Submission of Course for Certification.**

9.5 An applicant shall apply for consideration of certification of a course to the Division of Real Estate not less than 60 days prior to the anticipated date of the first class.

9.5.1 The application shall include a non-refundable filing fee of \$35.00 and an instructor certification fee of \$15.00 per course per instructor. Both fees should be made payable to the Division of Real Estate.

9.5.2 The application shall be made on the form approved by the Division which shall include the following information:

9.5.2.1 Name, phone number and address of the sponsor of the course, including owners and the coordinator or director responsible for the offering;

9.5.2.2 The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

9.5.2.3 A copy of the course curriculum including a course outline of the comprehensive subject matter with the length of time to be spent on each subject area broken into segments of no more than 15 minutes each, the instructor for each segment, and the teaching technique used in each segment;

9.5.2.4 Three to five learning objectives for every three hours of the course and the means to be used in assessing whether the learning objectives have been reached;

9.5.2.5 A complete description of all materials to be distributed to the participants;

9.5.2.6 The date, time and locations of each course;

9.5.2.7 The tuition or registration fee and a copy of the cancellation and refund policy;

9.5.2.8 The procedure for pre-registration and for taking and maintaining control of attendance during class time;

9.5.2.9 The difficulty level of the course categorized by beginning, intermediate or advanced;

9.5.2.10 A sample of the proposed advertising to be used, if any;

9.5.2.11 An instructor application on a form approved by the Division including the information as defined in R162-9.4;

9.5.2.12 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.5.2.13 A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve the licensee's ability to provide greater protection of and service to the public;

9.5.2.14 A signed statement agreeing not to market personal sales product.

9.5.2.15 A sample of the completion certificate, or the completion certificate required by the division, if any, that will be issued which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.5.2.16 Signature of the course coordinator or director.

9.5.3 Application for a ~~home study~~ video course will include all information as defined in R162-9-5-2 except for R162-9-5-2-6 and R162-9-5-2-8. The application will also include ~~the following:~~ a copy of the video.

9.5.3.1 If it is the intention of the course provider that the video course is to be viewed other than in a certified school, the application will also include the following:

(a) The method for determining that each home assignment has been completed by the registered student; and

~~9.5.3.2~~(b) The method for correcting home assignments and workbooks, and the procedure for notifying the student if the assignment has not been done correctly; and

~~9.5.3.3~~(c) A copy of ~~the video,~~ the home assignment and the workbook material.

#### **R162-9-6. Conditions to Certification.**

~~9.6.1. Upon final approval of a course by the Division, a master certificate will be issued which shall bear the following information:~~

~~9.6.1.1. Space for the licensee's name, type of license and license number, date of course;~~

~~9.6.1.2. The name of the course provider, course title, hours of credit, certification number, and certification expiration date;~~

~~9.6.1.3. Space for signature of the course sponsor and a space for the licensee's signature.~~

~~9.6.2]1~~ Upon completion of the educational program the course sponsor shall provide the certificate of attendance only to those students who attend a minimum of 90% of the required class time. Within 10 days of the end of the course, the sponsor shall provide to the Division a roster of students and their license numbers for whom certificates were issued.

9.6.[3]2 A course sponsor shall maintain for three years a record of attendance of each person attending an offering and any other prescribed information regarding the offering, including exam results, if any.

9.6.[4]3 Whenever there is a material change in a certified course, for example, curriculum, course length, instructor, refund policy, the sponsor shall promptly notify the Division in writing.

9.6.[5]4 All course certifications shall be valid for one year after date of approval by the Division.

9.6.[6]5 Instructor certifications shall expire December 31 of each year. Instructors who certify for the first time by September 30 shall renew December 31 of that same year. Instructors who certify for the first time after October 1 shall renew December 31 of the following year.

9.6.[6]5.1 To renew instructor certification an instructor must teach, during the year prior to renewal, a minimum of one class in each course for which certification is sought.

9.6.[6]5.2 If the instructor has not taught during the year and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the present level of expertise in the subject matter of the course.

.....

**KEY: continuing education**  
~~[January 25, 1996]~~1999  
Notice of Continuation October 21, 1997

61-2-5.5



**Education, Administration**  
**R277-503**  
**An Alternative Preparation for Teaching Program**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 21972  
FILED: 04/15/1999, 16:23  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was amended to provide more specific directions for applicants for APT status. These changes will improve the caliber of individuals authorized to teach as they complete academic requirements.

SUMMARY OF THE RULE OR CHANGE: Previous requirements of "work" and "volunteer experience" have been changed to "full-time" with a definition, other clarifying languages and changes in terminology.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since this amendment only clarifies standards for Alternative Preparation for Teaching Program (APT) applicants, there will be no costs or savings.

❖LOCAL GOVERNMENTS: Since this amendment only clarifies standards for APT applicants, there will be no costs or savings.

❖OTHER PERSONS: Since this amendment only clarifies standards for APT applicants, there will be no costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as there is no cost in clarifying standards for APT applicants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses--Steven O. Laing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Education  
Administration  
250 East 500 South  
Salt Lake City, UT 84111, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Carol B. Lear, School Law Specialist

**R277. Education, Administration.**

**R277-503. An Alternative Preparation for Teaching Program.**

**R277-503-1. Definitions.**

A. "APT" means an Alternative Preparation for Teaching Program.

B. "APT Certificate" means a certificate issued by the USOE to an APT candidate following the approval of an APT plan authorizing the candidate to teach under the supervision of a mentor teacher the subject(s) listed on the specific certificate for a two-year period.

C. "Board" means the Utah State Board of Education.

D. "Consortium" means a committee comprised of a mentor teacher, a school district representative and a College of Education representative who will act jointly to adapt a certification program to the needs of an APT candidate, supervise the candidate as he completes the program, evaluate the candidate's performance and recommend the candidate for final certification.

E. "Mentor teacher" means a certificated teacher trained as a mentor in the participating school district.

F. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Certificate, explained in detail in R277-504-3.

G. "USOE" means the Utah State Office of Education.

H. "Full-time work experience" means at least 40 hours work per week at a minimum of at least the federal minimum wage.

I. "Full-time volunteer work experience" means 40 hours work per week.

**R277-503-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6-103(1) which directs the Board to establish the required scholarship, training, and experience for certificate applicants, and by Section 53A-6-103(3) which allows the Board to qualify applicants for certificates by examination or otherwise.

B. The purpose of this rule is to provide an access to teacher certification for individuals who have special talents and abilities to bring to teaching, to provide additional flexibility to local school districts in addressing difficult geographical or subject-matter needs, and to enhance the ability of present teachers to change certification specialties.

**R277-503-3. APT Program Consortium.**

A. Each APT candidate shall be assigned a Consortium to supervise the candidate's program.

B. The Consortium shall:

(1) design or recommend for USOE approval an APT program for an individual candidate which includes:

- (a) adapting a certification program to the needs of the individual candidate;
- (b) supervising the activities and course work of the candidate;
- (c) evaluating the candidate; and
- (d) recommending the candidate for final certification.

(2) consider the candidate's experience, previous college course work and expertise in designing the APT program.

C. The APT program shall receive final approval from the USOE.

**R277-503-4. Candidate Identification and Eligibility.**

A. A candidate or a school district may initiate the APT process.

B. The school district shall ~~appoint~~coordinate Consortium members and call the first meeting.

C. Eligibility for the APT program shall be determined by:

(1) a candidate's special talents and abilities related to a subject area;

(2) availability of a teaching position in a district;

(3) a candidate having received a baccalaureate or higher degree from an accredited college or university with a major or minor in a subject taught at the secondary level;

(4) a candidate providing original transcripts showing completion of degree(s);

(~~4~~)5) a candidate's satisfactory compliance with all non-academic certification requirements of the USOE; and

(~~5~~)6) a candidate having at least five years of documented full-time work/full time volunteer work experience related to the proposed teaching area.

D. Exceptions to the general eligibility requirements may be recommended by the Consortium as part of an APT program.

E. APT program exit requirements:

(1) The candidate shall successfully complete the Consortium directed APT program; and

(2) The candidate shall have course work or demonstrated competency comparable with requirements for secondary certification.

**R277-503-5. Authorization and Supervision.**

A. Following evaluation of an APT candidate, the Consortium shall submit the candidate's written program plan, with timelines, within 60 days of employment for USOE approval.

B. Upon approval, the USOE shall issue a Provisional Secondary (APT only) Teaching Certificate.

C. This certificate authorizes the candidate to teach under the supervision of a mentor teacher for a period of no longer than two years the subject(s) listed on the certificate.

D. Mentor teacher supervision:

(1) School principals shall ensure that an APT candidate is supervised by a trained mentor teacher and receives assistance, if needed, from other school or district personnel.

(2) Assistance shall include supervision, feedback, and periodic evaluation.

**R277-503-6. Suspension or Dismissal.**

A. An APT candidate may be suspended or dismissed from the program and its teaching component in accordance with the Orderly Schools Termination Act, Sections 53A-8-101 through 53A-8-107 district policy, or for lack of satisfactory progress in the approved APT program as determined by the Consortium.

B. Final dismissal of an APT candidate must be made by the employing school district.

**R277-503-7. Recommendations for Certification.**

To receive a Consortium recommendation for a Standard certificate, an APT candidate shall:

A. complete two years of full-time supervised teaching and any other preparation requirements of the Consortium;~~and~~

B. have course work or demonstrated competency comparable with requirements for secondary teaching certification as determined by the USOE~~[-];~~

C. complete an evaluation; and

D. have a recommendation signed by all members of the Consortium.

**R277-503-8. Program Funding.**

A. During the two-year APT supervised teaching experience, the candidate's salary and benefits shall be established by the school district in which the candidate teaches.

B. Districts shall guarantee the necessary time for mentor teachers to observe and provide regular feedback to the APT candidate.

C. Course, registration, certification, and other fees or expenses associated with the APT program shall be borne by the candidate.

**R277-503-9. Program Evaluation.**

A. The State Board of Education-State Board of Regents Joint Liaison Committee, with assistance from local school districts, schools and colleges of education, shall evaluate the APT program after the first two years of program operation and again two years later.

B. The evaluation shall be presented to the State Board of Education and the State Board of Regents, appropriate legislative committees, and the Governor.

C. The evaluation shall be the basis for determining the future of the program.

**KEY: teacher certification**  
**[September 4, 1996]1999**  
**Notice of Continuation April 15, 1997**

**Art X Sec 3**  
**53A-1-402(1)**  
**53A-6-103(1)**  
**53A-6-103(3)**

Salt Lake City, UT 84111, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Carol B. Lear, School Law Specialist

◆ ————— ◆  
**Education, Administration**  
**R277-716**  
**Alternative Language Services (ALS)**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 21973  
FILED: 04/15/1999, 16:23  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was amended to reflect changes in terminology in the alternative language services (ALS) field. The distribution of available funds to districts needed simplification. A clarification was needed about testing children with disabilities for ALS.

SUMMARY OF THE RULE OR CHANGE: Terminology is updated; unneeded definitions are deleted; the distribution process is streamlined.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)  
FEDERAL REQUIREMENT FOR THIS RULE: Title VI (34 CFR 100)

ANTICIPATED COST OR SAVINGS TO:  
◆THE STATE BUDGET: Since the changes better reflect what is actually happening, there will be no costs or savings; consistent now with state law.  
◆LOCAL GOVERNMENTS: Since the changes better reflect what is actually happening, there will be no costs or savings; consistent now with state law.  
◆OTHER PERSONS: Since the changes better reflect what is actually happening, there will be no costs or savings; consistent now with state law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the rule better reflects what is actually happening; consistent now with state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses--Steven O. Laing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Education  
Administration  
250 East 500 South

**R277. Education, Administration.**  
**R277-716. Alternative Language Services (ALS).**  
**R277-716-1. Definitions.**

A. "Alternative Language Services (ALS)" means researched-based, instructional programs ~~[encompassing the total education process in all grades]~~and is compatible with the Board's PRINCIPLES OF EQUITY FOR UTAHS PUBLIC SCHOOLS and which meet the needs of children speaking a language other than English in the public school system. Programs shall be designed to enable students to achieve ~~[full]~~competence in English and to meet school grade-promotion and graduation requirements as determined by the Board and school districts. Such programs are included in the following models:

(1) "Special alternative instructional program," such as an English as a Second Language (ESL) program, means instruction designed for students of limited-English proficiency. Such programs are not transitional or developmental education programs but are designed to meet the particular linguistic and instructional needs of the students enrolled. Such programs shall provide both structured English language instruction and special instructional services which allow the student to achieve competence in the English language.

(2) "Transitional bilingual education" means a model designed for a student of limited-English proficiency which provides structured English instruction to allow a student to achieve competency in the English language, using the student's primary language as a medium of instruction. Insofar as possible, such instruction shall incorporate the cultural heritage of students in the program.

(3) "Developmental bilingual education" means full-time instruction using both English and a second language. Such instruction is designed to help students achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses of study. Classes in programs of developmental bilingual education shall be comprised of equal numbers of students whose primary language is English and limited-English proficient students whose primary languages are the second languages of instruction and study in the program.

B. "Title VI of the Civil Rights Act of 1964" is federal legislation that states no person in the United States shall, on the basis of race, color, or national origin, be excluded from

participation in the educational program offered by the school district.

C. "Lau v. Nichols" is a 1974 United States Supreme Court case in which the Court held that students who understand little or no English are denied equal opportunities when English is the sole medium of instruction and there are no systematic efforts to teach that language to non-English speaking children or language assistance to enable them to participate in the instructional program of the district.

D. "Students with bilingual needs" means students whose primary or home language is other than English (PHLOTE); and:

(1) who are monolingual speakers of a language other than English;

(2) who speak a language other than English and have[~~−~~] limited oral proficiency [~~and~~]or [~~written knowledge~~]limited literacy [~~of~~]in English or limited proficiency in both;

(3) who have equal oral knowledge of another language and English; but lack cognitive and academic English skills; or

(4) who speak predominantly English but have limited cognitive and academic skills in English.

[E. "Primary or home language," as it relates to schools, means the language used by the parents, legal guardians or primary care providers of the student.

—F. "Special alternative instructional," "transitional bilingual education," and "developmental bilingual education" are bilingual education models. Models, as applicable, shall be used in grades K-12, shall result in students satisfying grade promotion and graduation requirements, and shall provide for SEOPs for all students in the class:

(1) "Special alternative instructional program," such as an English as a second language (ESL) program, means instruction designed for students of limited-English proficiency. Such programs are not transitional or developmental education programs but are designed to meet the particular linguistic and instructional needs of the students enrolled. Such programs shall provide both structured English language instruction and special instructional services which allow the student to achieve competence in the English language.

(2) "Transitional bilingual education" means a model designed for a student of limited-English proficiency which provides structured English instruction to allow a student to achieve competency in the English language, using the student's primary language as a medium of instruction. Such instruction shall incorporate the cultural heritage of all students in American society.

(3) "Developmental bilingual education" means full-time instruction using both English and a second language. Such instruction is designed to help students achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses of study. Classes in programs of developmental bilingual education shall be comprised of equal numbers of students whose primary language is English and limited-English proficient students whose primary language is the second language of instruction and study in the program.

—G]E. "Board" means the Utah State Board of Education.

[H]E. "A Limited English proficient (LEP)" student means [~~limited English proficient~~]a student who meets one or more of the following conditions:

(1) was born outside of the United States or whose native language is not English;

(2) comes from an environment where a language other than English is dominant; or

(3) is American Indian or Alaska Native and comes from an environment where a language other than English has a significant impact on the student's level of English language proficiency; and

(4) who because of Subsections (1), (2) and (3) has sufficient difficulty speaking, reading, writing, or understanding the English language that the student is denied the opportunity to learn successfully in an English-only classroom or to participate fully in society.

[H]G. "USOE" means the Utah State Office of Education.

[F]H. "SEP or SEOP" means a student educational[~~7~~]plan or a student educational occupational plan which is cooperatively developed by the student, the student's parents and designated school personnel. The plan is guided by general Core Curriculum requirements and individual student interests and goals.

[K]I. "Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be completed by all students, K-12, as a requisite for graduation from Utah's secondary schools.

[L. "May 25, 1970 Memorandum" is a Memorandum issued by the former Department of Health, Education and Welfare to school districts with more than five percent national origin minority group children entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin." The purpose of the May 25th Memorandum was to clarify Title VI requirements concerning the responsibility of school districts to provide equal education opportunity to language minority students. In determining whether the recipient is operating a program for LEP students that meets Title VI requirements, OCR will consider whether:

(1) the program the recipient chooses is recognized as sound by experts in the field or is considered a legitimate experimental strategy;

(2) the program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and

(3) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome.

—M]J. "OCR" means Office for Civil Rights, a federal agency. OCR has jurisdiction over the enforcement of Title VI of the Civil Rights Act of 1964, its implementing regulations and various other antidiscrimination statutes.

#### **R277-716-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board; by the U.S. Department of Education Title VI Regulation (34 C.F.R. Part 100) which prohibits practices of discrimination when based on race, color or national origin; and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) direct that school districts provide alternative language services to students;

- (2) provide standards and criteria for those services and programs; and
- (3) distribute funds to districts to offset costs in providing alternative language services to designated students.

**R277-716-3. Classification, Identification and Assessment of Students.**

A. School districts shall determine a student's primary language upon entrance in a district school. School districts shall request information identifying a student's national origin and primary language upon registration in a district school and shall keep such information in the student's permanent record file. Information obtained from the registration form shall be supplemented by additional assessments conducted by the school and approved by the USOE.

B. Districts shall classify LEP students, as necessary, using categories specified for students with educational needs for ALS[needs]. Students shall be classified based on information gathered from assessments required in Subsection ~~(3)(C)~~ R277-716-3C. Such classification shall assist the USOE in determining the need and providing ~~the level of~~ funds ~~necessary~~ to assist districts in providing an equal educational opportunity to each student[s] with ALS education needs.

~~[C. Language Evaluation:~~

~~(1) Appraisals of a student's language proficiency are to be made by personnel qualified in bilingual education, trained in English as a second language, or trained to administer tests that measure language proficiency.~~

~~(2) Such instruments shall be approved for appraisal of student language proficiency (speaking, listening, reading and writing) through the USOE Students at Risk Section.]C. Language Assessment Requirements~~

~~(1) Districts shall use instruments approved by the USOE;~~

~~(2) Such instruments shall be administered by a school district employee trained in the interpretation of the specific tests.~~

~~(3) Tests shall be evaluated by a school district employee trained in the interpretation of the specific test.~~

D. Special education assessment tools shall not be used to assess English language proficiency.

E. Parents shall be notified ~~and consulted~~ about their children's placement in alternative language programs. ~~[The parent information letter shall be in the parents' primary language.]Communication to parents shall be in the parent's preferred language.~~

**R277-716-4. [Staffing.]Certification/Endorsement Requirement.**

~~[A. A school district shall follow one of the patterns described below or another approved by the USOE for staffing its ALS education program:~~

~~(1) employ a certificated teacher with bilingual/ESL certification and bilingual or ESL endorsement or both;~~

~~(2) employ a certificated teacher and a bilingual aide who speaks the language of the students and has been trained in a USOE-approved program. This option may only be used for a period not to exceed two years beginning January, 1996; or~~

~~(3) employ a bilingual/bicultural college graduate who has demonstrated successful experience in educating LEP students and who is participating in a training program leading to teacher~~

certification in bilingual education/ESL. This option may only be used for a period not to exceed two years beginning January, 1996. ~~—B.—]By the school year 1999-2000, teachers who are assigned to [work primarily with]provide English language instruction to LEP students shall have certification [or]with endorsement in Bilingual Education or English as a [s]Second [t]Language.~~

**R277-716-5. Program Components[~~Funding and Review~~].**

~~[A. A school district shall write, implement and submit to the USOE an annual evaluation of its educational program for LEP students intended to help LEP students attain proficiency in English and move toward an equal educational opportunity. The district's program shall include all of the following:~~

~~—(1) procedures which include:~~

~~—(a) identifying students who need assistance;~~

~~—(b) developing a program which, in the view of professional educators, has a reasonable chance for success;~~

~~—(c) ensuring that needed staff, curricular materials, and facilities are in place and used properly;~~

~~—(d) developing appropriate evaluative standards for measuring the progress of students including program exit criteria; and~~

~~—(e) continuing program assessment and services as needed after completion of ALS education programs:~~

~~—(2) a well defined instructional program which is based on research with on-going evaluation of English language proficiency as approved by the USOE. Examples of such programs are special alternative instruction (such as ESL), transitional bilingual education, and developmental bilingual education programs:~~

~~—(3) delivery of the core content classes to the students in their primary languages as dictated by language assessment needs of students. The cultures of all students shall be infused into the Core Curriculum:~~

~~—(4) documentation of the delivery of specific language development programs:~~

~~—(5) curriculum for LEP students based upon assessment of students' educational needs; and]~~

~~—(6) service to LEP students who qualify for special education. This service:~~

~~—(a) shall be in compliance with Public Law 94-142;~~

~~—(b) shall be provided with special education funds for students referred for evaluation as candidates for special education; and~~

~~—(c) shall be provided by special education personnel with bilingual cultural backgrounds who are qualified to work with LEP students in assessment and instruction:~~

~~—(7) other programs and services that satisfy the requirements of the May 25, 1970 Memorandum and that are consistent with Lau v. Nichols:~~

~~—(8) The USOE shall provide ALS funding to school districts based on the number of students served in the district and based on the district's compliance with Subsections 5A(1) through (7):~~

~~B. The district program shall assess the student's cognitive academic skills in the language in which the student has the greatest academic proficiency:~~

~~C. Programs shall serve LEP students until their native cognitive academic skills in English are at a level comparable to their native English speaking peers as evidenced by the students' progress in Core Curriculum classes:~~

— D. The USOE Students at Risk Section shall review school district ALS proposals and assist school districts to comply with federal standards.

— E. Upon agreement with participating school districts, the USOE shall designate one participating school district to act as fiscal agent. That district shall receive adequate funding from the ALS legislative appropriation to provide general program coordination, teacher endorsement courses and program training for all school districts receiving ALS funding. ]A. An ALS (Alternative Language Services) program shall include the following:

- (1) The designation of procedures for identifying primary or home language of students.
- (2) School district employee(s) trained for administering the language proficiency assessment instruments to students whose primary or home language is other than English.
- (3) A program design using a model that is research-based and has demonstrated effectiveness in meeting the needs of LEP students.
- (4) Certificated employees who are appropriately endorsed in accordance with the ALS program design(s) selected by the school district.
- (5) Evaluation standards for measuring the progress of students including program exit criteria.
- (6) Plans for monitoring student performance for a minimum of two years after students exit the program.
- (7) A comprehensive system for staff development.
- (8) Services to LEP students who qualify for special education. Services:
  - (a) shall be in compliance with IDEA 1997-(PL 105-17); and
  - (b) shall be provided with special education funds for students who qualify for special education.
- (9) Appropriate language development and culturally relevant materials specifically designed for language acquisition.
- (10) Procedures for parent involvement.

**R277-716-6. Distribution of Funds and Reporting.**

A. The USOE shall provide ALS funding to school districts based on the number of students identified as LEP in the district and based on the district's conformity with R277-716-5.

B. A school district that accepts ALS funds shall provide the USOE with a year-end report as requested.

**KEY: public education, alternative language services\***  
~~March 10, 1997~~ 1999 Art X Sec 3  
 Notice of Continuation January 14, 1998 53A-1-401(3)



Environmental Quality, Air Quality  
**R307-328**  
 Davis and Salt Lake Counties and  
 Ozone Nonattainment Areas: Gasoline  
 Transfer and Storage

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE No.: 21949  
 FILED: 04/12/1999, 14:23  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To reduce ozone formation by extending the rule to Utah and Weber Counties.

SUMMARY OF THE RULE OR CHANGE: R307-328 requires gasoline transport vehicles and the bulk plants and service stations which receive gasoline from them to capture the vapors released when gasoline is transferred, and is usually called Stage I Vapor Recovery. It does not apply to dispensing gasoline to vehicles. First, add a new Subsection R307-328-1(1) to specify that the rule applies to transport vehicles and gasoline dispensing stations in Davis, Salt Lake, Utah and Weber Counties. Next, add a new Section R307-328-2 specifying that sources in Davis and Salt Lake Counties were required to meet the compliance schedule in Section R307-325-4, that sources in Utah and Weber Counties shall be in compliance by May 1, 2000, and sources in any area later designated as nonattainment for ozone shall comply within 6 months after designation to nonattainment. There are other minor numbering and editorial corrections in the remainder of the rule. See separate filing in this *Bulletin* on related rule R307-342.

(DAR Note: The amendment to R307-342 is found under DAR No. 21950 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be a small additional cost for the Division of Air Quality inspectors for a one-time inspection of approximately 1 bulk plant in Utah County and 86 service stations in Weber County to be sure they have installed vapor recovery equipment. (The gas stations in Utah County already are inspected under the oxygenated gasoline program and the additional costs to check them are insignificant.) Total cost will be approximately \$390.

❖LOCAL GOVERNMENTS: Approximately 12 local governments maintain approximately 26 underground gasoline storage tanks. Vapor recovery equipment will cost approximately \$405 per tank for a total of \$10,530.

❖OTHER PERSONS: There are approximately 315 gas stations in Utah and Weber Counties for a cost of \$372,195. There is approximately 1 bulk plant in Utah County, for a cost of \$15,000. The total for gas stations and bulk plants is approximately \$387,195. Volatile organic compounds will be reduced by 711 tons per year. Over a ten-year period, that is a cost per ton of reduction of approximately \$80 per ton. By comparison, approximately \$3,000 per ton is considered an acceptable cost for reductions from industrial sources of air pollution. There will be some small additional cost for tank trucks, but nearly all of them are already equipped.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost for each underground storage tank at a gas station will be about \$405 and the average station has 3 tanks for about \$1,215 per average gas station. The cost for each bulk plant will be approximately \$15,000. The cost for each delivery truck is approximately \$1,520, but most trucks already are equipped.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In 1998, the ozone health standard was exceeded 65 times at monitoring stations from North Ogden to Spanish Fork. This is a very cost-effective mechanism to reduce volatile organic compounds which contribute to formation of ozone during the summer--Dianne R. Nielson.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Air Quality  
150 North 1950 West  
Box 144820  
Salt Lake City, UT 84114-4820, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at [jmiller@deq.state.ut.us](mailto:jmiller@deq.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/18/1999, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Building, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/15/1999

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

### **R307. Environmental Quality, Air Quality.**

#### **R307-328. Davis, ~~and~~ Salt Lake, Utah and Weber Counties and Ozone Nonattainment Areas: Gasoline Transfer and Storage.**

##### **R307-328-1. Applicability and Definitions.**

###### (1) Applicability.

(a) Transport Vehicles. R307-328 applies to the owner or operator of any gasoline tank truck, railroad tank car, or other gasoline transport vehicle that loads or unloads gasoline in Davis, Salt Lake, Utah or Weber County or any ozone nonattainment area.

(b) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, or service station located in Davis, Salt Lake, Utah, or Weber County or any ozone nonattainment area.

~~(+)~~2 R307-325 establishes ~~[applicability and]~~ general requirements for R307-328.

~~(2)~~3 The following additional definitions apply to R307-328:

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

##### **R307-328-2. Compliance Schedule.**

(1) Sources located in Davis and Salt Lake Counties are subject to the compliance schedule in R307-325-4.

(2) Sources located in Utah and Weber Counties shall be in compliance with R307-328 by May 1, 2000. The executive secretary may grant a one-year waiver from this compliance schedule if the source submits adequate documentation that the compliance date would create undue hardship.

(3) Sources located in any other area that is designated nonattainment for ozone shall be in compliance within six months of the date the EPA designates the area nonattainment.

##### **R307-328-~~2~~3. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles.**

(1) No person shall load or permit the loading of gasoline into any tank truck, trailer, railroad tank car, or other transport vehicle unless the emissions from such vehicle are controlled by use of a vapor collection and control system and submerged or bottom filling. Reasonably available control technology shall be required and in no case shall vapor emissions to the atmosphere exceed 0.640 pounds per 1,000 gallons transferred.

(2) Such vapor collection and control system shall be properly installed and maintained.

(3) The loading device shall not leak.

(4) The loading device shall utilize the dry-break loading design couplings and shall be maintained and operated to allow no more than an average of 15 cc drainage per disconnect for 5 consecutive disconnects.

(5) All loading and vapor lines shall be equipped with fittings which make a vapor tight connection and shall automatically close~~d~~ upon disconnection to prevent release of the organic material.

(6) A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307-328-~~2~~3 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installation shall on-load and off-load gasoline by use of bottom or submerged filling or alternative equivalent methods. The emission limitation is based on operating procedures and equipment specifications using Reasonably Available Control Technology as defined in EPA documents EPA 450/2-77-026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,"~~[-]~~ and EPA-450/2-77-035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants,"~~[-]~~ The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary.

(7) Hatches of transport vehicles shall not be opened at any time during loading operations except to avoid emergency situations or during emergency situations. Pressure relief valves on storage tanks and transport vehicles shall be set to release at the highest possible pressure, in accordance with State or local fire codes and National Fire Prevention Association guidelines. Pressure in the vapor collection system shall not exceed the transport vehicle pressure relief setting.

(8) Each owner or operator of a gasoline storage and dispensing installation shall conduct testing of vapor collection systems used at such installation and shall maintain records of all tests for no less than two years. Testing procedures of vapor collection systems shall be approved by the executive secretary and shall be consistent with the procedures described in the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

(9) Semi-annual testing shall be conducted and records maintained of such test. The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change.

(10) The vapor collection and vapor processing equipment shall be designed and operated to prevent gauge pressure in the delivery vessel from exceeding 18 inches of water and prevent vacuum from exceeding 6 inches of water. During testing and monitoring, there shall be no reading greater than or equal to 100 percent of the lower explosive limit measured at 1.04 inches around the perimeter of a potential leak source as detected by a combustible gas detector. Potential leak sources include, but are not limited to, piping, seals, hoses, connections, pressure or vacuum vents, and vapor hoods. In addition, no visible liquid leaks are permitted during testing or monitoring.

**R307-328-[3]4. Stationary Source Container Loading.**

(1) No person shall transfer or permit the transfer of gasoline from any delivery vessel (i.e. tank truck or trailer) into any stationary storage container with a capacity of 250 gallons or greater unless such container is equipped with a submerged fill pipe and at least 90 percent of the gasoline vapor, by weight, displaced during the filling of the stationary storage container is prevented from being released to the atmosphere. This requirement shall not apply to:

(a) the transfer of gasoline into any stationary storage container of less than 550 gallons used primarily for the fueling of implements of husbandry if such container is equipped with a permanent submerged fill pipe;

(b) the transfer of gasoline into any stationary storage container having a capacity of less than 2,000 gallons which was installed prior to January 1, 1979, if such container is equipped with a permanent submerged fill pipe;

(c) the transfer of gasoline to storage tanks equipped with floating roofs or their equivalent which have been approved by the executive secretary.

(2) The 90 percent performance standard of the vapor control system shall be based on operating procedures and equipment specifications. The design effectiveness of such equipment and the operating procedure must be documented and submitted to and approved by the executive secretary.

(3) Each owner~~[7]~~ or operator of a gasoline storage tank or the owner~~[7]~~ or operator of the gasoline delivery vessel subject to (1) above shall install vapor control equipment, which includes, but is not limited to:

(a) vapor return lines and connections sufficiently free of restrictions to allow transfer of vapor to the delivery vessel or to the vapor control system, and to achieve the required recovery;

(b) a means of assuring that the vapor return lines are connected to the delivery vessel, or vapor control system, and storage tank during tank filling;

(c) restrictions in the storage tank vent line designed and operated to prevent:

(i) the release of gasoline vapors to the atmosphere during normal operation; and

(ii) gauge pressure in the delivery vessel from exceeding 18 inches of water and vacuum from exceeding 6 inches of water.

**R307-328-[4]5. Transport Vehicles.**

(1) Gasoline transport vehicles must be designed and maintained to be vapor tight during loading and unloading operations as well as during transport, except for normal pressure venting required under United States Department of Transportation Regulations.

(2) No person shall knowingly allow the introduction of gasoline into, dispensing of gasoline from, or transportation of gasoline in a gasoline transport vehicle without a current Utah Vapor Tightness Certificate.

(3) A vapor-laden transport vehicle may be refilled only at installations equipped to recover, process ~~and~~ or dispose of vapors. Transport vehicles which only service locations with storage containers specifically exempted from the requirements of R307-328-[3]4 need not be retrofitted to comply with R307-328-[4]5, provided such transport vehicles are loaded through a submerged fill pipe or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary.

**R307-328-[5]6. Leak Tight Testing.**

(1) Gasoline tank trucks and their vapor collection systems shall be tested for leakage by procedures approved by the executive secretary and consistent with the procedures described in R307-342.

(2) Gasoline tank trucks and their vapor collection systems shall be tested for leakage annually between December 1 and May 1.

(3) The tank shall not sustain a pressure change of more than 750 pascals (3 inches of H<sub>2</sub>O) in five minutes when pressurized (by air or inert gas) to 4500 pascals (18 inches of H<sub>2</sub>O) or evacuated to 1500 pascals (6 inches of H<sub>2</sub>O).

(4) No visible liquid leaks are permitted during testing.

(5) Gasoline tank trucks shall be certified leak tight at least annually by a qualified contractor approved by the executive secretary.

(6) Each owner or operator of a gasoline tank truck shall have in his possession a valid vapor tightness certification, which:

(a) shows the date that the gasoline tank truck last passed the Utah vapor tightness certification test; and

(b) shows the identification number of the gasoline tank truck.

(7) Records of certification inspections, as well as any maintenance performed, shall be retained by the owner~~[r]~~ or operator of the tank truck for a two year period and be available for review by the executive secretary or his representative.

**KEY: air pollution, gasoline transport, ozone**  
~~[September 15, 1998]~~1999

19-2-101  
 19-2-104



**Environmental Quality, Air Quality**  
**R307-342**  
**Davis and Salt Lake Counties and**  
**Ozone Nonattainment Areas:**  
**Qualification of Contractors, Test**  
**Procedures for Testing of Vapor**  
**Recovery Systems for Gasoline**  
**Delivery Tanks**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 21950  
 FILED: 04/12/1999, 14:23  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To reduce ozone pollution by extending the coverage of the rule to Utah and Weber Counties.

SUMMARY OF THE RULE OR CHANGE: R307-342 requires that gasoline delivery equipment be equipped to provide leak-tight loading and off-loading in Salt Lake and Davis County, and specifies the procedures by which contractors may become certified to test for leak tightness. In Section R307-342-1, delete the first paragraph which is explanatory only, and change the reference to R307-328 to match the revised R307-328 (published separately in this *Bulletin*). In Subsections R307-342-3(1) and R307-342-3(3), add that the rule applies in Utah and Weber Counties, as well as Salt Lake and Davis. There are other minor editorial corrections in the remainder of the rule.

**(DAR Note:** The amendment to R307-328 is found under DAR No. 21949 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: No additional expense because trucks are already inspected.
- ❖LOCAL GOVERNMENTS: No cost to local governments because they do not operate gasoline delivery trucks.

❖OTHER PERSONS: Unknown, but only a few tank trucks will be affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Tanker trucks must be tested annually at a cost of approximately \$150 per tank. However, the testing is already required for any truck traveling through Davis or Salt Lake County. Therefore, most trucks traveling through Weber and Utah County already are tested under the existing rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In 1998, the ozone health standard was exceeded 65 times at monitoring stations from North Ogden to Spanish Fork. This is a very cost-effective mechanism to reduce volatile organic compounds which contribute to formation of ozone during the summer--Dianne R. Nielson.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
 Air Quality  
 150 North 1950 West  
 Box 144820  
 Salt Lake City, UT 84114-4820, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at [jmiller@deq.state.ut.us](mailto:jmiller@deq.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/18/1999, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Building, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/15/1999

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

**R307. Environmental Quality, Air Quality.**

**R307-342. Davis,~~and~~ Salt Lake, Utah and Weber Counties and Ozone Nonattainment Areas: Qualification of Contractors~~;~~ and Test Procedures for ~~Testing of~~ Vapor Recovery Systems for Gasoline Delivery Tanks.**

**R307-342-1. ~~[Background]~~Testing Required Annually.**

~~[An important part of the plan to reduce hydrocarbon emissions in the non-attainment area requires that gasoline delivery tanks be vapor tight during loading, unloading and transport. The gasoline vapors can only be recovered from the storage containers if the vacuum seals on the tanks are functioning. The vapors expelled during transport loading are forced into a vapor processor only when the pressure seal is functioning. Therefore, to prevent excessive gasoline vapor losses during the two transfer operations and during transport, the delivery tanks and associated vapor systems must be leak tight.]~~

—]R307-328-[#]6 requires that the gasoline delivery tanks and associated vapor recovery systems be tested for leakage at least annually by a qualified contractor approved by the [E]xecutive [S]ecretary [S]ecretary, [Utah Air Conservation Committee.

—The following is the appropriate method to become a qualified contractor including an approvable test procedure:]

#### **R307-342-2. General Applicability.**

[These procedures are]R307-342 is applicable to anyone who wishes to become qualified by the [E]xecutive [S]ecretary to perform vapor tightness tests on gasoline transport vessels which are required to be equipped with gasoline vapor recovery equipment and to be tested in accordance with R307-328-[#]6.

#### **R307-342-3. General Requirements.**

(1) A vapor recovery system is required on all gasoline delivery tanks loading at a terminal or nonexempt bulk plant [and]or off-loading at a stationary storage container in Davis, Salt Lake, Utah or Weber County or any ozone nonattainment area[the Salt Lake County and Davis County area].

(2) The design of the vapor recovery system is to be such that when the delivery tank is connected to an approved storage tank vapor recovery system or loading terminal, 90% vapor recovery efficiencies are realized. The connectors of the delivery tanks need to be compatible with the fittings on the fill pipes and vapor vents at the storage containers and gasoline loading terminals where the delivery tank will service or be serviced. Adapters may be used to achieve compatibility.

(3) [Also, n]No person may operate a gasoline delivery tank in Davis, Salt Lake, Utah or Weber County or any ozone nonattainment area[the Salt Lake and/or Davis County area,] unless the tank is certified leak tight. The owner['] or operator of any delivery tank must insure that the tank is vapor tight according to the requirements of R307-328-[#]6, by having the tank satisfactorily pass the test requirements described in these procedures or other procedures approved by the [E]xecutive [S]ecretary when performed by a contractor who has been qualified by the [E]xecutive [S]ecretary. Each tank must be certified at least annually.

(4) [The regulation]R307-328-6(3) requires, "the tank shall not sustain a pressure change of more than 750 pascals (3 inches of H<sub>2</sub>O) in five minutes when pressurized (by air or inert gas) to 4500 pascals (18 inches of H<sub>2</sub>O), or evacuated to 1500 pascals (6 inches of H<sub>2</sub>O)" during the annual certification test for vapor tightness.[(R307-328-4)]

#### **R307-342-4. Contractor Qualification Requirements.**

(1) The [E]xecutive [S]ecretary has determined that any [company/]person may become qualified to perform delivery tank vapor tightness tests by:

(a) Preparing a written, detailed and approvable procedure by which the [company/]person proposes to conduct the pressure/vacuum test. The minimum test performance requirements are described in R307-342-6 and R307-342-7.

(b) Submitting the procedure with a letter requesting approval of the procedure and qualification of the [company/]person as a qualified testing contractor.

(c) Having the necessary facilities, equipment and expertise to perform a satisfactory test.

(d) Performing an acceptable demonstration test[(s)] with a representative of the [E]xecutive [S]ecretary[~~or a member of his staff~~] in attendance.

(2) The [company/]person determined qualified to perform the tests will be issued a letter of qualification by the [E]xecutive [S]ecretary valid for one year.

(3) Re-qualification will be accomplished by:

(a) Requesting by letter to be requalified by the [E]xecutive [S]ecretary; and

(b) Performing an acceptable demonstration test[(s)] with a representative of the [E]xecutive [S]ecretary[~~or a member of his staff~~] in attendance after which a letter of requalification will be sent.

#### **R307-342-5. Equipment Requirements.**

(1) Pressure Source. An air pump, shop compressed air, compressed gas tanks of air or inert gas, or other approved air pressure producing source or procedure sufficient to pressurize the tank to 18 inches of water above atmospheric pressure is required. Some models of reversible tank-type shop vacuum cleaners will perform adequately.

(2) Vacuum Source. A vacuum pump or other approved vacuum producing procedure capable of evacuating the tank to 6 inches of water is required. For example, some models of shop vacuum cleaners can accomplish this function.

(3) Pressure - Vacuum Supply Hose[(s)]. A hose of sufficient length and wall strength to reach from the tank to the pressure vacuum source.

(4) Manometer. A liquid manometer or equivalent instrument capable of measuring up to 25 inches of water with scale division of 0.1 inches of water. A 1/4[-]inch hose to connect the manometer to the adapter tap is recommended.

(5) Stopwatch. A stopwatch with scale division to one second is required.

(6) Adapter. An adapter to connect the pressure vacuum hose to the tank with a shutoff valve to isolate the tank from the required pressure vacuum equipment is required. The adapter requires a shutoff valve, a tap to attach the manometer, and a bleed valve for adjusting pressure/vacuum to specified levels prior to start of timed period. However, each contractor must use an adapter compatible with his equipment.

(7) Caps. Dust caps with good gaskets are required on all outlets during the test.

(8) Pressure/Vacuum Relief Valves. The test apparatus should be equipped with an in line pressure/vacuum relief valve set to activate at 25 inches of water above atmospheric and 12 inches of water below if the pressure/vacuum equipment has greater capacity than the set points to prevent possible tank damage.

#### **R307-342-6. Test Procedures and Preparations.**

(1) Location. The delivery tank must be tested in a location where it will not be subject to direct sunlight. Shop heaters/air conditioners must be turned off during the test as they will affect the tank stability.

(2) Purging the Tank. A good purge is necessary.

(a) The tank must be emptied of gasoline and vapors before testing to minimize "vapor growth" problems. Hauling a load of diesel fuel is recommended.

(b) A steam purge to degas the tank is acceptable.

(c) An alternate method is to purge with a high volume of air. For this purge, the hatches are to be opened and purge air or inert gas should be blown through the tank for 30 minutes or more to degas the tank. This method is not as effective and often requires a much longer time for stabilization during the test.

(3) Visual Inspection. While the tank is being purged, or prior to the test, the entire tank should be visually inspected for evidence of wear, damage or misadjustments that could be a source of potential leaks. Areas to check are domes, dome vents, cargo tank piping, hose connections, hoses and delivery elbows. Any part found defective should be adjusted, repaired or replaced as necessary before the pressure test is started.

(4) Vents, Valves, and Outlets.

(a) The emergency valves in the bottom of the tank must be opened during the purge and then closed to test.

(b) Open the top vents. If the top vents are the pneumatic type, then a shop air line connection must be provided as the vents must be in the open position during the purge and then closed to test.

(c) In order to complete the test, some types of dome vents may have to be replaced.

(d) During the test, all compartments must be interconnected so that the tank may be tested as a single unit. If this cannot be done, each compartment must be tested as a separate tank.

(e) Dust caps with good gaskets must be installed on all outlets.

(5) Pretest Preparation and Procedure.

(a) Open and close each dome cover.

(b) Connect the static electric ground connections to tank, attach the liquid delivery and vapor return hoses, remove liquid delivery elbows and seal the liquid delivery hose fitting, install dust caps on all outlets except the vapor return hose.

(c) Attach the test adapter to the vapor return hose of the tank under test with the shutoff valve closed.

(d) Connect the pressure supply hose to the adapter.

(e) Connect the 1/4[-]-inch hose to the adapter tap and the manometer [{}if applicable{}] and position of the manometer or gauge at eye level.

(f) Open all internal vents and valves if possible. If not possible, each compartment must be tested as if each compartment was a separate tank.

(6) The Pressure Test.

(a) With all preparations complete, turn on the pressure source and open the shutoff valve in the adapter to apply air pressure slowly. Pressurize the tank to 18 inches of water.

(b) Close the shutoff valve and allow the pressure in the tank to stabilize. When the pressure has stabilized, read and record the time and initial pressure on the manometer.

(c) Allow five minutes to elapse, then read and record the final time and pressure.

(d) Disconnect the pressure source from the adapter and slowly open the shutoff valve to bring the tank to atmospheric pressure.

(e) Subtract the final pressures from the initial pressures.

(f) If the sustained pressure drop is greater than 3.0 inches of water, repair the leaks and then repeat the steps in (a) through (e).

(g) Repeat the steps in (a) through (f) until the change in pressure for two consecutive runs agrees within 1/2 inch of water. Calculate the arithmetic average of the two results.

(7) The Vacuum Test.

(a) Connect the vacuum source to the adapter. Start the vacuum source and slowly open the shutoff valve to evacuate the tank to six inches of water and close the shutoff valve.

(b) Allow the pressure in the tank to stabilize, adjust as necessary to maintain six inches of water vacuum until the pressure stabilizes.

(c) Read and record the time and the initial vacuum reading on the manometer. Allow five minutes to elapse, then read and record the final manometer reading.

(d) Disconnect the vacuum source from the adapter, and slowly open the shutoff valve to bring the tank to atmospheric pressure.

(e) Subtract the final reading from the initial reading.

(f) If the sustained vacuum loss is greater than three inches of water, the leakage source must be located and repaired. The steps in (a) through (e) must be repeated.

(g) Repeat the steps in (a) through (f) until the change in vacuum for two consecutive runs agree within 1/2 inches of water. Calculate the arithmetic average of the two results.

(8) When the calculated average pressure change in five minutes for both the pressure test and the vacuum test are three inches of water or less, the requirements of the test are satisfied and the tested tank may be certified leak tight.

#### **R307-342-7. Certification of a Delivery Tank.**

(1) The approved contractor will upon satisfactory completion of the vapor tightness test complete the documentation of certification in two copies. If desired, each contractor may prepare his own certificate as long as the following items are included:

(a) Gasoline delivery tank pressure test.

(b) Tank owner and address.

(c) Tank ID number.

(d) Testing location.

(e) Date of test.

(f) Tester name and signature.

(g) Company or affiliation of testers.

(h) Test data results.

(i) Date of next required test.

(2) The contractor will keep one copy which will be made available for inspection by the [E]xecutive [S]ecretary for two years. The tank owner[?]\_or operator will keep the other copy of the certification with the delivery tank for two years for inspection by the [E]xecutive [S]ecretary.

(3) The approved contractor will mark the certified tank below the DOT test marking with "V.R. TESTED" followed by the month and year of the current certified test. The vapor recovery test marking shall be at least 1-1/4" high black permanent letters on a white background. The letters and numbers must be of a type that will remain legible from a distance of 20 feet for at least one year (painted or printed sticker is acceptable).

**KEY: air pollution, ozone, gasoline transport\***

**[September 15, 1998]1999**

**19-2-104**

**Notice of Continuation June 26, 1997**



Environmental Quality, Radiation  
Control  
**R313-12-3**  
Definitions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21951

FILED: 04/12/1999, 16:20

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Significant amounts of waste material, termed "alternate feed materials," have been recently reprocessed and disposed at a uranium mill that does not consider itself to be a commercial radioactive waste facility subject to requirements of local, legislative, and gubernatorial approvals and environmental protection. Recently approved alternate feed materials to be reprocessed have been higher in volume and lower in uranium content. If a uranium mill is reprocessing uranium-bearing waste and receiving a recycling or disposal fee, but not recovering economic quantities of source material, it may be construed as sham recycling or disposal. The federal government guidance is not preventing such facilities from becoming de facto low-level waste disposal facilities by defining specific criteria for what constitutes sham disposal or recycling. This rule would set state standards for processing of such alternate feed materials by establishing a minimum source material content. The uranium mill could also demonstrate that lower uranium content material could be economically recovered.

SUMMARY OF THE RULE OR CHANGE: The rule change defines what a "commercial radioactive waste facility" is. This would include a uranium mill that processes alternate feed material. Alternate feed materials are also defined.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-105

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--costs of enforcement actions and litigation would occur with or without this rule. Future savings may occur as a result of protection of the groundwater resource, avoiding damage to and future cleanup costs associated with the groundwater resource that may be impacted by these waste activities.

❖LOCAL GOVERNMENTS: None--there is no review required of local government; future savings may occur as a result of protection of the groundwater resource, avoiding damage to and future cleanup costs associated with the groundwater resource that may be impacted by these waste activities.

❖OTHER PERSONS: Persons living near the uranium mill will be protected from potential contamination of any drinking water source due to enhanced groundwater protection. International Uranium Corporation would bear the additional regulatory costs associated with an adequate groundwater

program. These costs would be offset by their ability to potentially receive more wastes resulting in increased revenues and savings from not having to address a future groundwater remediation issue.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The uranium mill owner/operator will be required to either: (1) obtain uranium materials with sufficient content to justify operations; (2) provide a demonstration that the material has sufficient uranium content combined with other economic factors that shows that the mill is not just recovering the recycling or disposal fee; or (3) apply for a radioactive disposal facility license. Compliance costs for the legitimate recycling determination should be minimal considering the same information is required for obtaining a Nuclear Regulatory Commission (NRC) license amendment. If the mill decided to opt for a radioactive waste disposal facility license, licensing fees are required for a siting review (\$100,000) and for submission and review of a disposal application (\$500,000).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the information provided in this rulemaking and determined that there may be fiscal impact relating to compliance costs for uranium mills in Utah that are required to apply to receive alternate feed materials. The compliance costs would be greater if the mills chose to apply for and become commercial radioactive waste disposal facilities. However, operation of a commercial waste disposal facility without a license violates State law.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Radiation Control  
State of Utah Office Park, Bldg. 2  
168 North 1950 West  
PO Box 144850  
Salt Lake City, UT 84114-4850, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

William J. Sinclair at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at [bsinclair@deq.state.ut.us](mailto:bsinclair@deq.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/11/1999

AUTHORIZED BY: William J. Sinclair, Executive Secretary

**R313. Environmental Quality, Radiation Control.**

**R313-12. General Provisions.**

**R313-12-3. Definitions.**

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain chapter will be found in that chapter.

"A<sub>1</sub>" means the maximum activity of special form radioactive material permitted in a Type A package.

"A<sub>2</sub>" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building that is identified on the license and where radioactive material may be received, used or stored.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"Alternate feed materials" means material other than natural ores which are processed through a uranium mill to recover source material alone or together with other recoverable materials. Alternate feed material does not include by-product material.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does

not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" ( $H_{T,50}$ ), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ( $H_{E,50}$ ), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate

of  $3.7 \times 10^{10}$  disintegrations or transformations per second (dps or tps).

"Deep dose equivalent" ( $H_d$ ), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter ( $1000 \text{ mg/cm}^2$ ).

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" ( $H_T$ ), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" ( $H_E$ ), means the sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ), and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter ( $300 \text{ mg/cm}^2$ ).

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from a source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designated to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with R313-32-75, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency,

political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to practice pharmacy. See Sections 58-17-1 through 58-17-27.

"Physician" means an individual licensed by this state to practice medicine and surgery in all its branches. See Sections 58-12-26 through 58-12-43.

"Practitioner" means an individual licensed by this state in the practice of a healing art. Examples would be, physician, dentist, podiatrist, osteopath, and chiropractor.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with R313-32-75, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant.

"Radiation source." See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" ( $H_s$ ) which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per  $cm^2$ ), averaged over an area of one square centimeter.

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination

of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\left( \frac{175(\text{Grams contained U-235})}{350} \right) + \left( \frac{50(\text{Grams U-233/200})}{200} \right) + \left( \frac{50(\text{Grams Pu})}{200} \right)$$
 is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that

the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

**KEY: definitions, units, inspections, exemptions**

~~[March 20, 1998]~~1999

19-3-104

Notice of Continuation March 26, 1997

19-3-108

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## Environmental Quality, Radiation Control R313-18-12 Instructions to Workers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21947

FILED: 04/12/1999, 10:38

RECEIVED BY: NL

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make rule consistent with intent of 10 CFR 19.12.

SUMMARY OF THE RULE OR CHANGE: This change provides clarification that certain employees must be instructed of their responsibility to report, to their employer (a licensee), a condition that may result in a violation of the licensee's license.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

FEDERAL REQUIREMENT FOR THIS RULE: 10 CFR 19.12

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The proposed change only clarifies the intent of an existing rule. A small savings might be made due to eliminating a small number of enforcement actions caused by a misunderstanding of the rule as previously written.

❖LOCAL GOVERNMENTS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

❖OTHER PERSONS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The clarification made to this rule should improve employer (licensee) - employee communication in areas of radiation safety as reflected by the licensee's license conditions. It also provides a means to help the business (licensee) avoid any noncompliance with the conditions of the radioactive materials license. The result should be cost beneficial to the business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
 Radiation Control  
 State of Utah Office Park, Bldg. 2  
 168 North 1950 West  
 PO Box 144850  
 Salt Lake City, UT 84114-4850, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Donald Mitchell at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at dmitchel@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/11/1999

AUTHORIZED BY: William J. Sinclair, Executive Secretary

**R313. Environmental Quality, Radiation Control.**  
**R313-18. Notices, Instructions and Reports to Workers by Licensees or Registrants--Inspections.**  
**R313-18-12. Instructions to Workers.**

(1) All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 1.0 mSv (100 mrem):

(a) shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) shall be instructed in the health protection considerations associated with exposure to radiation or radioactive material to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposure to radiation or radioactive material;

(d) shall be instructed as to their responsibility to report promptly to the licensee or registrant a condition which may constitute, lead to, or cause a violation of the Act, these rules, ~~and licenses~~ or a condition of the licensee's license or unnecessary exposure to radiation or radioactive material;

(e) shall be instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to R313-18-13.

(2) In determining those individuals subject to the requirements of R313-18-12(1), licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations for the workplace.

**KEY: radioactive material, inspection, radiation safety, licensing**  
~~[January 23, 1998]~~1999 **19-3-104**  
 Notice of Continuation March 26, 1997 **19-3-108**



Environmental Quality, Radiation  
 Control  
**R313-19-30**  
 Reciprocal Recognition of Licenses

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 21948  
 FILED: 04/12/1999, 10:38  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify that Utah does not grant reciprocity in areas of exclusive federal jurisdiction.

SUMMARY OF THE RULE OR CHANGE: This change provides clarification that reciprocity is granted by rule anywhere in the State of Utah, except in areas of exclusive Federal jurisdiction

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108  
 FEDERAL REQUIREMENT FOR THIS RULE: 10 CFR 19.12

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The proposed change is of value to the Nuclear Regulatory Commission (NRC), as it lessens the possibility of reciprocity licensees in Utah using radioactivity in areas of exclusive Federal Jurisdiction without authorization. No fiscal impact on the State is expected because the NRC has jurisdiction for areas of Exclusive Federal Jurisdiction.

❖LOCAL GOVERNMENTS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

❖OTHER PERSONS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As this change only embodies clarification of an existing rule, no fiscal impact is expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses in Utah are still covered under 10 CFR 150 to do work in areas of Exclusive Federal Jurisdiction. No change in this has occurred and no fiscal impact is expected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Radiation Control  
State of Utah Office Park, Bldg. 2  
168 North 1950 West  
PO Box 144850  
Salt Lake City, UT 84114-4850, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Donald Mitchell at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at dmitchel@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/11/1999

AUTHORIZED BY: William J. Sinclair, Executive Secretary

**R313. Environmental Quality, Radiation Control.**  
**R313-19. Requirements of General Applicability to Licensing of Radioactive Material.**  
**R313-19-30. Reciprocal Recognition of Licenses.**

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Executive Secretary in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Executive Secretary, obtain permission to proceed sooner. The Executive Secretary may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Executive Secretary may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in R313-19-30(1) except by transfer to a person:

(i) specifically licensed by the Executive Secretary or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material, or

(ii) exempt from the requirements for a license for material under R313-19-13(2)(a).

(2) Notwithstanding the provisions of 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 R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Executive Secretary within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Executive Secretary may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or property.

**KEY: license, reciprocity, transportation, exemptions**  
**[March 12,]1999** **19-3-104**  
**Notice of Continuation May 1, 1997** **19-3-108**



Environmental Quality, Radiation  
Control  
**R313-25-36**  
Alternate Feed Materials at Uranium  
Mills

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21952

FILED: 04/12/1999, 16:20

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Significant amounts of waste material, termed "alternate feed materials," have been recently reprocessed and disposed at a uranium mill that does not consider itself to be a commercial radioactive waste facility subject to requirements of local, legislative, and gubernatorial approvals and environmental protection. Recently approved alternate feed materials to be reprocessed have been higher in volume and lower in uranium content. If a uranium mill is reprocessing uranium-bearing waste and receiving a recycling or disposal fee, but not recovering economic quantities of source material, it may be construed as sham recycling or disposal. The federal government guidance is not preventing such facilities from becoming de facto low-level waste disposal facilities by defining specific criteria for what constitutes sham disposal or recycling. This rule would set state standards for processing of such alternate feed materials by establishing a minimum source material content. The uranium mill could also demonstrate that lower uranium content material could be economically recovered.

SUMMARY OF THE RULE OR CHANGE: This new rule defines acceptable criteria for alternate feed material to be processed at uranium mills. It would also allow alternate feed material below the criteria to be evaluated on a case-by-case basis to assess whether it could be economically recovered. It also allows the option of a uranium mill to apply for a license application for a commercial radioactive waste facility.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-105

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--costs of enforcement actions and litigation would occur with or without this rule. Future savings may occur as a result of protection of the groundwater resource, avoiding damage to and future cleanup costs associated with the groundwater resource that may be impacted by these waste activities.

❖LOCAL GOVERNMENTS: None--there is no review required of local government; future savings may occur as a result of protection of the groundwater resource, avoiding damage to and future cleanup costs associated with the groundwater resource that may be impacted by these waste activities.

❖OTHER PERSONS: Persons living near the uranium mill will be protected from potential contamination of any drinking water source due to enhanced groundwater protection. International Uranium Corporation would bear the additional regulatory costs associated with an adequate groundwater program. These costs would be offset by their ability to potentially receive more wastes resulting in increased revenues and savings from not having to address a future groundwater remediation issue.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The uranium mill owner/operator will be required to either: (1) obtain uranium materials with sufficient content to justify operations; (2) provide a demonstration that the material has sufficient uranium content combined with other economic factors that shows that the mill is not just recovering the recycling or disposal fee; or (3) apply for a radioactive disposal facility license. Compliance costs for the legitimate recycling determination should be minimal considering the same information is required for obtaining a Nuclear Regulatory Commission license amendment. If the mill decided to opt for a radioactive waste disposal facility license, licensing fees are required for a siting review (\$100,000) and for submission and review of a disposal application (\$500,000).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the information provided in this rulemaking and determined that there may be fiscal impact relating to compliance costs for uranium mills in Utah that are required to apply to receive alternate feed materials. The compliance costs would be greater if the mills chose to apply for and become commercial radioactive waste disposal facilities. However, operation of a commercial waste disposal facility without a license violates State law.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Radiation Control  
State of Utah Office Park, Bldg. 2  
168 North 1950 West  
PO Box 144850  
Salt Lake City, UT 84114-4850, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

William J. Sinclair at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at [bsinclair@deq.state.ut.us](mailto:bsinclair@deq.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/11/1999

AUTHORIZED BY: William J. Sinclair, Executive Secretary

**R313. Environmental Quality, Radiation Control.****R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.****R313-25-36. Alternate Feed Materials at Uranium Mills.**

(1) A uranium mill which processes alternate feed materials to recover source material alone or together with other recoverable materials is considered to be a commercial radioactive waste disposal facility if the materials processed do not have an average uranium and/or thorium content equal to or greater than .05% by weight.

(2) Notwithstanding Subsection 1, a uranium mill which processes alternate feed materials with an average uranium and/or thorium content of less than .05% by weight will not be considered to be a commercial radioactive waste disposal facility if the uranium mill demonstrates to and receives approval from the Executive Secretary that products can be economically recovered, not taking into account the amount the uranium mill charges to take the materials.

(3) To demonstrate that products can be economically recovered, the uranium mill must quantify and provide specific evidence of the:

(a) direct and indirect costs of acquiring and processing the materials;

(b) value of all the recovered products as determined by actual or reasonably projected market prices;

(c) reduced costs of operations and savings from improvements in production or other efficiencies; and

(d) value of other economic advantages or disadvantages.

(4) A uranium mill shall, prior to processing alternate feed materials that have an average uranium and/or thorium content of less than .05% by weight, either submit a license application and receive a license for disposal as a commercial radioactive waste disposal facility as required under UCA Section 19-3-105 or request approval from the Executive Secretary as provided in R313-25-36(2).

(5) Nothing in this rule is intended to modify or affect requirements for storing and disposing of hazardous waste under the Utah Solid and Hazardous Waste Act, UCA Section 19-6-101 et seq. and implementing rules.

**KEY: radiation, radioactive waste disposal**  
**[January 23, 1998]1999** **19-3-104**  
**Notice of Continuation May 1, 1997** **19-3-108**



**Environmental Quality, Solid and  
Hazardous Waste  
R315-2  
General Requirements - Identification  
and Listing of Hazardous Waste**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 21953  
FILED: 04/13/1999, 08:58  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change is listing four petroleum refining process wastes as

hazardous (K169 - K172). It also is deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of these four newly listed wastes. The proposed rule change excludes certain recycled secondary materials from the definition of solid waste.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106  
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 261.6, 1998 ed.; 40 CFR 261.31, 1998 ed.; 40 CFR 261.32, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations, because the rule changes implement current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-2. General Requirements - Identification and Listing of Hazardous Waste.**

**R315-2-3. Definition of Hazardous Waste.**

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) It is a mixture of solid waste and a hazardous waste that is listed in sections R315-2-10 or R315-2-11 solely because it exhibits one or more of the characteristics of hazardous waste identified in section R315-2-9, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 or unless the solid waste is excluded from regulation under R315-2-4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 for which the hazardous waste listed in R315-2-10 or R315-2-11 was listed. However, nonwastewater mixtures are still subject to the requirements of R315-13, which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in sections R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under sections R315-2-16 and R315-2-17; however, the following mixtures of solid wastes and hazardous wastes listed in sections R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and:

(A) One or more of the following spent solvents - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the

amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million;

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million;

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided it is demonstrated that the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation[-]; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or

volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this

provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(~~(iii)-(v)~~)(iii) and (iv). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE  
Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste No. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using

one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

#### **R315-2-4. Exclusions.**

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

~~(12) [Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process, SIC Code 2911, at or before a point, other than direct insertion into a coker, where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials, such as wastewater, generated from normal petroleum refining, exploration and production, and transportation practices.~~

~~Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include, among other things, oil-bearing hazardous wastes listed in R315-2-10, which incorporates by reference 40 CFR part 261 D, e.g., K048-K052, F037, F038. However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in R315-1-1.(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.~~

~~(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).~~

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10 and 11, which incorporates by reference 40 CFR 261 Subpart D, generated within the primary mineral processing

industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing, provided that:

(i) The secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The secondary material is not accumulated speculatively;

(iii) Except as provided in (iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Executive Secretary, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be

placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(17) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual

requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

- (i) The growing and harvesting of agricultural crops.
- (ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of subsection R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples

to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, and R315-4 through R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-10, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-1.3(f) (40 CFR 261.4(f)) or has an appropriate RCRA plan approval or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative

techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) **SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.**

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-

acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

**R315-2-6. Requirements for Recyclable Materials.**

The requirements of 40 CFR 261.6, [~~1997~~1998 ed., as amended by ~~61 FR 59931, November 25, 1996~~63 FR 42110, August 6, 1998, are adopted and incorporated by reference.

**R315-2-10. Lists of Hazardous Wastes.**

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

- Ignitable Waste: (I)
- Corrosive Waste: (C)
- Reactive Waste: (R)
- Toxicity Characteristic Waste: (E)
- Acute Hazardous Waste: (H)
- Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, [~~1996~~1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference, excluding the following wastes:

(1) K064 -- Acid Plant blowdown slurry or sludge resulting from the thickening of blowdown slurry from primary copper production. (T)

(2) K065 -- Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. (T)

(3) K066 -- Sludge from treatment of process wastewater or acid plant blowdown or both from primary zinc production. (T)

(4) K090 -- Emission control dust or sludge from ferrochromium silicon production. (T)

(5) K091 -- Emission control dust or sludge from ferrochromium production. (T)

(6) K160 -- Solids from the production of thiocarbamates and solids from the treatment of wastes from thiocarbamates.

**R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.**

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the

residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 1998 ed., is adopted and incorporated by reference, ~~excluding the following wastes:~~

~~(1) U277 -- Sulfallate.~~

~~(2) U365 -- H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester.~~

~~(3) U366 -- Dazomet.~~

~~(4) U375 -- Carbamic acid, butyl-, 3-iodo-2-propynyl ester.~~

~~(5) U376 -- Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.~~

~~(6) U377 -- Carbamodithioic acid, methyl-, monopotassium salt.~~

~~(7) U378 -- Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt.~~

~~(8) U379 -- Carbamodithioic acid, dibutyl, sodium salt.~~

~~(9) U381 -- Carbamodithioic acid, diethyl-, sodium salt.~~

~~(10) U382 -- Carbamodithioic acid, dimethyl-, sodium salt.~~

~~(11) U383 -- Carbamodithioic acid, dimethyl, potassium salt.~~

~~(12) U384 -- Carbamodithioic acid, methyl-, monosodium salt.~~

~~(13) U385 -- Carbamodithioic acid, dipropyl-, S-propyl ester.~~

~~(14) U386 -- Carbamodithioic acid, cyclohexylethyl-, S-ethyl ester.~~

~~(15) U390 -- Carbamodithioic acid, dipropyl-, S-ethyl ester.~~

~~(16) U391 -- Carbamodithioic acid, butylethyl-, S-propyl ester.~~

~~(17) U392 -- Carbamodithioic acid, bis (2-methylpropyl)-, S-ethyl ester.~~

~~(18) U393 -- Copper, bis(dimethylcarbamodithioato-S, S)-, Copper dimethyldithiocarbamate.~~

~~(19) U396 -- Iron, tris(dimethylcarbamodithioato-S, S)-.~~

~~(20) U400 -- Bis(pentamethylene)thiuram tetrasulfide, Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-.~~

~~(21) U401 -- Bis(dimethylthiocarbomoyl) sulfide.~~

~~(22) U402 -- Tetrabutylthiuram disulfide, Thioperoxydicarbonid diamide, tetrabutyl.~~

~~(23) U403 -- Disulfiram, Thioperoxydicarbonic diamide, tetraethyl.~~

~~(24) U407 -- Zinc, bis(diethylcarbamodithioato-S, S)-.]~~

**KEY: hazardous waste**

~~[February 15,]1999~~

**19-6-105**

**Notice of Continuation March 12, 1997**

**19-6-106**

## Environmental Quality, Solid and Hazardous Waste

### R315-3

## Application and Plan Approval Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21954

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change modifies the requirement for a post-closure permit, to allow for the use of a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. This rule change also specifies the Part B information submission requirements for facilities that receive post-closure permits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule changes implement current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-3. Application and Plan Approval Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.**

**R315-3-3. Application Submittal Required.**

(a)(1) Plan Approval Application. Any person who is required to have a plan approval, including new applicants and persons with expiring plan approvals, shall complete, sign and submit, a minimum of two applications to the Executive Secretary as described in this section. Persons currently authorized with interim status shall apply for permits when required by the Executive Secretary. Persons covered by RCRA permits by rule, R315-3-18, need not apply. Procedures for applications, issuance and administration of emergency plan approvals are found exclusively in R315-3-19. Procedures for application, issuance and administration of research, development, and demonstration plan approvals are found exclusively in R315-3-22.

(2) Owners and operators of hazardous waste management units must have plan approvals during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to R315-7-14, which incorporates by reference 40 CFR 265.115, after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under R315-3-3(q) and (r), or obtain an enforceable document in lieu of a post-closure permit, as provided under R315-3-3(s). If a post-closure permit is required, the permit must address applicable R315-8 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of R315. The denial of a plan approval for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under R315-3-3.

(b)(1) Existing Hazardous Waste Management Facilities. Owners and operators of existing hazardous waste management facilities shall submit Part A of their plan approval application to the EPA Regional Administrator or Executive Secretary no later than:

(i) Six months after the date of publication of rules which first require them to comply with the standards set forth in R315-7 or R315-14, or

(ii) Thirty days after the date they first become subject to the standards set forth in R315-7 or R315-14, whichever first occurs.

For facilities which had to comply with R315-7 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations, 45 FR 33006 et seq., the deadline for submitting an application was November 19, 1980. Where other existing facilities shall begin complying with R315-7 or R315-14 at a later date because of revisions to R315-1, R315-2, R315-7, or R315-14, the Executive Secretary will specify when those facilities shall submit a plan approval application.

(2)(i) The Executive Secretary may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities shall submit Part A of their plan approval application if he finds that there has been substantial confusion as to whether the owners and operators of such facilities were required to file a plan approval application and such confusion is attributed to ambiguities in R315-1, R315-2, R315-7 or R315-14 of the regulations.

(ii) The Executive Secretary may by compliance order issued under 19-6-112 and 19-6-113 extend the date by which the owner and operator of an existing hazardous waste management facility must submit part A of their plan approval application.

(3) The owner or operator of an existing hazardous waste management facility may be required to submit Part B of the plan approval application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a Part B application in accordance with the dates specified in R315-3-32. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under R315 that render the facility subject to the

requirement to have a plan approval, shall submit a part B application in accordance with the dates specified in R315-3-32.

(4) 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 section R315-3-16.

(c) New Hazardous Waste Management Facilities.

(1) Except as provided in R315-3-3(c)(3), no person shall begin physical construction of a new hazardous waste management facility without having submitted Part A and Part B of the application and having received a finally effective plan approval.

(2) An application for a plan approval for a new hazardous waste management facility, including both Part A and Part B, may be filed any time after promulgation of applicable regulations. The application shall be filed with the Regional Administrator if at the time of application the State has not received final authorization for permitting such facility; otherwise it shall be filed with the Executive Secretary. Except as provided in paragraph (c)(3) of this section, all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding R315-3-3(c)(1), a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the U.S. EPA Administrator under section (6)(e) of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., and any person owning or operating such a facility may, at any time after construction or operation of the facility has begun, file an application for a plan approval to incinerate hazardous waste authorizing the facility to incinerate waste identified or listed in these rules.

(d)(1) Updating plan approval applications.

If any owner or operator of a hazardous waste management facility has filed Part A of a plan approval application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Regional Administrator if the State has not received final authorization, within six months after the promulgation of revised regulations under 40 CFR 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Executive Secretary if the State has obtained final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in the State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with changes during interim status, R315-3-31. Revised Part A applications necessary to comply with the provisions of interim status shall be filed with the Executive Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of R315-3-3(d)(1) does not receive interim status as to the wastes not covered by duly filed Part A applications.

(e) Reapplications. Any hazardous waste management facility with an effective plan approval shall submit a new application at least 180 days before the expiration date of the effective plan approval, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant

permission for applications to be submitted later than the expiration date of the existing plan approval.

(f) Recordkeeping. See R315-3-7(c).

(g) The Executive Secretary may require a permittee or an applicant to submit information in order to establish plan approval conditions under R315-3-23(b)(2), and R315-3-11(i).

(h) 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 plan approval, except that the owner shall also sign the plan approval application.

(i) Completeness.

(1) The Executive Secretary shall not issue a plan approval before receiving a complete application for a plan approval except for plan approval by rule, or emergency plan approval. An application for a plan approval is complete when the Executive Secretary receives an application form and any supplemental information which are completed to his satisfaction. An application for a plan approval is complete notwithstanding the failure of the owner or operator to submit the exposure information described in R315-3-7(d). The Executive Secretary may deny a plan approval for the active life of a hazardous waste management facility or unit before receiving a complete application for a plan approval.

(2) The Executive Secretary shall review for completeness every application for a plan approval. Each application for a plan approval submitted by a new hazardous waste management facility, should be reviewed for completeness by the Executive Secretary in accordance with the applicable review periods of 19-6-108. Each application for a plan approval submitted by an existing hazardous waste management facility, both Part A and B of the application, should be reviewed for completeness in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is complete, the Executive Secretary may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

(3) If an applicant fails or refuses to correct deficiencies in the application, the plan approval may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.

(j) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a reasonable date shall be scheduled.

(k) The effective date of an application is the date on which the Executive Secretary notifies the applicant that the application is complete as provided in R315-3-3(i)(2).

(l) For each application from a major new hazardous waste management facility, the Executive secretary shall no later than the

effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Executive Secretary intends to:

- (1) Prepare a draft plan approval;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing; and
- (4) Issue a final plan approval.

(m) Specific inclusions. Owners or operators of certain facilities require hazardous waste operation plan approvals as well as permits under other environmental programs for certain aspects of facility operation. Hazardous waste operation plan approvals are required for:

(1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with a State or Federal UIC permit will be deemed to have a "permit by rule" if they comply with requirements of R315-3-18.

(2) Treatment, storage, and disposal of hazardous waste at facilities requiring and NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a "permit by rule" if they comply with provisions of R315-3-18.

(n) Specific exclusions. The following persons are among those who are not required to obtain a plan approval:

(1) Generators who accumulate hazardous waste on-site for less than the time periods as provided in R315-5-10, which incorporates the requirements of 40 CFR 262.34.

(2) Farmers who dispose of hazardous waste pesticides from their own use as provided in R315-5-11.

(3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under R315-2-5, small quantity generator exemption.

(4) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(5) Owners or operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-9 at a transfer facility for a period of ten days or less.

(7) Persons adding absorbent material to waste in a container, as defined in 40 CFR 260.10, which is incorporated by reference in R315-1, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with.

(8) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7) managing the wastes listed below. These handlers are subject to regulation under R315-16.

- (i) Batteries as described in R315-16-1.2;
  - (ii) Pesticides as described in R315-16-1.3;
  - (iii) Thermostats as described in R315-16-1.4; and
  - (iv) Mercury lamps as described in R315-16-1.6.
- (o) Further exclusions.

(1) A person is not required to obtain a plan approval for treatment or containment activities taken during immediate response to any of the following situations;

(i) Discharge of a hazardous waste;

(ii) An imminent and substantial threat of a discharge of hazardous waste.

(iii) A discharge of a material which, when discharged, becomes a hazardous waste.

(2) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(p) Plan approvals for less than an entire facility. The Executive Secretary may issue or deny a plan approval for one or more units at a facility without simultaneously issuing or denying a plan approval to all units at the facility. The interim status of any unit for which a plan approval has not been issued or denied is not affected by the issuance or denial of a plan approval to any other unit at the facility.

(q) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under R315-7 standards shall obtain a post-closure plan approval unless they can demonstrate to the Executive Secretary that the closure met the standards for closure by removal or decontamination in R315-8-11.5, R315-8-13.8, or R315-8-12.6, respectively. The demonstration may be made in the following ways:

(1) if the owner or operator has submitted a Part B application for a post-closure plan approval, the owner or operator may request a determination, based on information contained in the application, that R315-8 closure by removal standards were met. If the Executive Secretary believes that R315-8 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in R315-3-3(r);

(2) if the owner or operator has not submitted a Part B plan approval application for a post-closure plan approval, the owner or operator may petition the Executive Secretary for a determination that a post-closure plan approval is not required because the closure met the applicable R315-8 closure standards;

(A) the petition must include data demonstrating that closure by the removal or decontamination standards of R315-8 were met.

(B) the Executive Secretary shall approve or deny the petition according to the procedures outlined in R315-3-3(r).

(r)(1) Procedures for Closure Equivalency Determination. If a facility owner or operator seeks an equivalency demonstration under R315-3-3(q), the Executive Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The Executive Secretary will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the equivalence of the R315-7 closure to an R315-8 closure. The Executive Secretary will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(2) The Executive Secretary will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Executive Secretary finds that the closure did not meet the applicable R315-8

standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet R315-8 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving a written statement. The Executive Secretary will review any additional information submitted and make a final determination within 60 days.

(3) if the Executive Secretary determines that the facility did not close in accordance with R315-8-7, which incorporates by reference 40 CFR 264.110 - 116, closure by removal standards, the facility is subject to post-closure plan approval requirements.

(s) Enforceable documents for post-closure care. At the discretion of the Executive Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of R315-7-14, which incorporates by reference 40 CFR 265.121. "Enforceable document" means an order, a plan, or other document issued by the Executive Secretary that meets the requirements of R315-9 and R315-101, including a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

### **R315-3-5. General Information Requirements for Part B.**

(a) Part B information requirements presented below reflect the standards promulgated in R315-8. These information requirements are necessary in order for the Executive Secretary to determine compliance with the standards of R315-8. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the Executive Secretary may make allowance for submission of the information on a case-by-case basis. Information required in Part B shall be submitted to the Executive Secretary and signed in accordance with requirements in R315-3-8. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in R315-3-6.14 is required in Part B of the plan approval application. [Part B of the application includes the following:]

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as R315-8-1 provides otherwise:

(1) A general description of the facility,

(2) Chemical and physical analyses of the hazardous wastes and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with R315-8.

(3) A copy of the waste analysis plan required by R315-8-2.4(b) and, if applicable R315-8-2.4(c).

(4) A description of the security procedures and equipment required by R315-8-2.5, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by R315-8-2.6(b). Include, where applicable, as part of the inspection schedule, specific requirements in R315-8-9.5, R315-8-10, which incorporates by reference the specific provisions of 40 CFR 264.193(i) and 264.195, R315-8-11.3, R315-8-12.3, R315-8-13.4, R315-8-14.3, and R315-8-16, which incorporates by reference 40 CFR 264.602, R315-8-17, which incorporates by reference 40 CFR 264.1033, R315-8-18, which incorporates by reference 40 CFR

264.1052, 264.1053, and 264.1058, and R315-8-22, which incorporates by reference 40 CFR 264.1084, 264.1085, 264.1086, and 264.1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of R315-8-3.

(7) A copy of the contingency plan required by R315-8-4. Include, where applicable, as part of the contingency plan, specific requirements in R315-8-11.8, R315-8-10.11, and R315-8-12.6.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations, for example, ramps, special forklifts;

(ii) Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, trenches;

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste, for example, protective clothing; and

(vi) Prevent releases to the atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with R315-8-2.8 including documentation demonstrating compliance with R315-8-2.8.

(10) Traffic pattern, estimated volume, number, types of vehicles and control, for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals.

(11) Facility location information:

(i) In order to determine the applicability of the seismic standard R315-8-2.9(a), the owner or operator of a new facility must identify the political jurisdiction, e.g., county, township, or election district, in which the facility is proposed to be located. If the county or election district is not listed in R315-50-11, no further information is required to demonstrate compliance with R315-8-2.9(a).

(ii) If the facility is proposed to be located in an area listed in R315-50-11, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of a quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault, which have displacement in Holocene time, within 3,000 feet of a facility are present, based on data from:

(I) Published geologic studies,

(II) Aerial reconnaissance of the area within a five mile radius from the facility,

(III) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(IV) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults, to include lineations, which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility

where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of the portions of the facility, data shall be obtained from a subsurface exploration, trenching, of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. The trenching shall be performed in a direction that is perpendicular to known faults, which have had displacement in Holocene time, passing within 3,000 feet of the portions of the facility where treatment, storage, and disposal of hazardous waste will be conducted. The investigation shall document with supporting maps and other analyses, the location of any faults found. The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification shall indicate the source of data for the determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors, e.g., wave action, which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area, usually areas of the floodplain less than 200 feet in width, these areas shall be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(iv) Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units, e.g., tanks, incinerators, and flood protection devices, e.g., floodwalls, dikes, at the facility and how these will prevent washout.

(C) If applicable, and in lieu of R315-3-5(a)(11)(iv)(A) and (B), a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(I) Timing of the movement relative to flood levels, including estimated time to move the waste, to show that the movement can be completed before floodwaters reach the facility.

(II) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the rules under R315-3, R315-7, and R315-8.

(III) The planned procedures, equipment, and personnel to be used and the means to ensure that the resources will be available in time for use.

(IV) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with R315-8-2.9(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with R315-8-2.7. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in R315-8-2.7(d)(3).

(13) A copy of the closure plan and where applicable, the post-closure plan required by R315-8-7 which incorporates by reference 40 CFR 264.112, and 264.118, and R315-8-10 which incorporates by reference 40 CFR 264.197. Include where applicable as part of the plans specific requirements in R315-8-9.9, R315-8-10, R315-8-11.9, R315-8-12.9, R315-8-13.11, R315-8-14.11, R315-8-15.12, and R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under R315-8-7 which incorporates by reference 40 CFR 264.119, have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with R315-8-8 which incorporates by reference 40 CFR 264.142, and a copy of the documentation required to demonstrate financial assurance under R315-8-8 which incorporates by reference 40 CFR 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with R315-8-8, which incorporates by reference 40 CFR 264.144, plus a copy of the financial assurance mechanism adopted in compliance with R315-8-8.3 documentation required to demonstrate financial assurance under R315-8-8, which incorporates by reference 40 CFR 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of R315-8-8, which incorporates by reference 40 CFR 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 264.147(a), which is incorporated by reference in R315-8-8, and if applicable 40 CFR 264.147(b), also incorporated by reference in R315-8-8, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in 40 CFR 264.147(c), incorporated by reference in R315-8-8.

(18) Where appropriate, proof of coverage by a financial mechanism as required in R315-8-8.

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters, one inch, equal to

not more than 61.0 meters, 200 feet. For large hazardous waste management facilities, the Executive Secretary will allow the use of other scales on a case-by-case basis. Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters, five feet, if relief is greater than 6.1 meters, 20 feet, or an interval of 0.6 meters, two feet, if relief is less than 6.1 meters, 20 feet. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (i) Map scale and date.
- (ii) 100-year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses, residential, commercial, agricultural, recreational.
- (v) A wind rose, i.e., prevailing windspeed and direction.
- (vi) Orientation of map, north arrow.
- (vii) Legal boundaries of the hazardous waste management facility site.
- (viii) Access control, fences, gates.
- (ix) Injection and withdrawal wells both on-site and off-site.
- (x) Buildings; treatment, storage, or disposal operations; or other structures, recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.
- (xi) Barriers for drainage or flood control.
- (xii) Location of operational units within hazardous waste management facility site, where hazardous waste is, or will be, treated, stored, or disposed, include equipment cleanup areas.

(20) Applicants may be required to submit such information as may be necessary to enable the Executive Secretary and the Board to carry out duties under State laws and Federal laws as specified in 40 CFR 270.3.

(21) For land disposal facilities, if a case-by-case extension has been approved under R315-13, which incorporates by reference 40 CFR 268.5, or a petition has been approved under R315-13, which incorporates by reference 40 CFR 268.6, a copy of the notice of approval for the extension is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comment or materials submitted at the meeting, as required under R315-3-38.1(c).

### **R315-3-6. Specific Part B Information Requirements.**

The following additional information is required from owners or operators of specific types of hazardous waste management facilities that are used or to be used for storage, treatment, or disposal;

#### **6.1 SPECIFIC PART B INFORMATION REQUIREMENTS FOR CONTAINERS**

For facilities that store containers of hazardous waste, except as otherwise provided in R315-8-9.1,

(a) A description of the containment system to demonstrate compliance with R315-8-9.6. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with R315-8-9.6(c) including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with R315-8-9.7, location of buffer zone and containers holding ignitable or reactive wastes, and R315-8-9.8(c), location of incompatible wastes, where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with R315-8-9.8(a) and (b) and R315-8-2.8.

(e) Information on air emission control equipment as required in R315-3-6.13, which incorporates by reference 40 CFR 270.27.

#### **6.2 SPECIFIC PART B INFORMATION REQUIREMENTS FOR TANK SYSTEMS**

For facilities that use tanks to store or treat hazardous waste the requirements of 40 CFR 270.16, 1996 ed., are adopted and incorporated by reference.

#### **6.3 SPECIFIC PART B INFORMATION REQUIREMENTS FOR SURFACE IMPOUNDMENTS**

For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in R315-8-11.1.

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-2.10, R315-8-11.2, R315-8-11.9, R315-8-11.10, addressing the following items:

(1) The liner system, except for an existing portion of a surface impoundment. If an exemption from the requirement for a liner is sought as provided by R315-8-11.2(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(2) The double liner and leak, leachate, detection, collection, and removal system, if the surface impoundment must meet the requirements of R315-8-11.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-11.2(d), (e), or (f), submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(5) Proposed action leakage rate, with rationale, if required under R315-8-11.9, and response action plan, if required under R315-8-11.10;

(6) Prevention of overtopping; and

(7) Structural integrity of dikes;

(c) A description of how each surface impoundment, including the double liner, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of R315-8-11.7(a), (b), and (d). This information should be included in the inspection plan submitted under R315-3-5(b)(5).

(d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under R315-8-11.7(c). For new units, the owner or operator shall submit a statement by a qualified engineer that he will provide a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under R315-8-11.8(b) and (c). This information should be included in the contingency plan submitted under R315-3-5(b)(7).

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under R315-8-11.9(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-11.9(a)(2) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-5(b)(13).

(g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how R315-8-11.10 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how R315-8-11.11 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-11.12. This submission must address the following items as specified in R315-8-11.12:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(j) Information on air emission control equipment as required by R315-3-6.13, which incorporates by reference 40 CFR 270.27.

#### 6.4 SPECIFIC PART B INFORMATION REQUIREMENTS FOR WASTE PILES

For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in R315-8-12.1;

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to R315-8-12.2 and R315-8-6 as provided by R315-8-12.1(c) or R315-8-6(b)(2), an explanation of how the standards of R315-8-12.1(c) will be complied with or detailed plans and an engineering report describing how the requirements of R315-8-6(b)(2) will be met.

(c) Detailed plans and an engineering report describing how the waste pile is or will be designed, constructed, operated and maintained to meet the requirements of R315-8-2.10, R315-8-12.2, R315-8-12.8, and R315-8-12.9, addressing the following items:

(1)(i) The liner system, except for an existing portion of a waste pile, if the waste pile must meet the requirements of R315-8-12.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-12.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate, detection, collection, and removal system, if the waste pile must meet the requirements of R315-8-12.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-12.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-12.8, and response action plan, if required under R315-8-12.9;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-12.3(a), (b), and (c). This information must be included in the inspection plan submitted under R315-3-5(b)(5).

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of R315-8-12.7 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how R315-8-12.8 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under R315-8-12.9(a). For any waste not to be

removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-14.11(a) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-5(b)(13).

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026 and F027 describing how a waste pile that is not enclosed, as defined in R315-8-12.1(c) is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-12.10. This submission must address the following items as specified in R315-8-12.10:

(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.

#### 6.5 SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS

For facilities that incinerate hazardous waste, except as R315-8-15.1 provides otherwise, the applicant shall fulfill the requirements of R315-3-6.5(a), (b), and (c).

(a) When seeking exemption under R315-8-15.1(b) or (c), ignitable, corrosive or reactive wastes only;

(1) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in R315-2-9(f) and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of the trial burn, including all required determinations, in accordance with R315-3-20; 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 40 CFR part 261 Appendix VIII, as incorporated by reference at R315-50-10, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10 which would reasonably not be expected to be

found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in R315-8-15.4.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in R315-3-6(a)(5)(iii)(A). This analysis should specify the POHC's which the applicant has identified in the waste for which a plan approval is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in R315-8-15.4.

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with R315-8-15.4 and R315-8-15.6 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Any supplemental information as the Executive Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in R315-3-6(a)(5)(iii)(A), sufficient to allow the Executive Secretary to specify as plan approval Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Executive Secretary shall approve a plan approval application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under R315-8-15.6, operating conditions that will ensure that the performance standards in R315-8-15.4 will be met by the incinerator.

#### 6.6 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LAND TREATMENT FACILITIES

For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in R315-8-13.1:

(a) A description of plans to conduct a treatment demonstration as required under R315-8-13.3. The description shall include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test, e.g., column leaching, degradation;

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(b) A description of a land treatment program, as required under R315-8-13.2. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with R315-8-13.4(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content.

(3) Provisions for unsaturated zone monitoring including:

(i) Sampling equipment, procedures and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for the selection in R315-8-13.9(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to R315-8-2.4, which incorporates by reference 40 CFR 264.13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of R315-8-13.4. This submission shall address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under R315-3-5(b)(5).

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under R315-8-13.7 will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made;

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(e) If food-chain crops are to be grown, and cadmium is present in the land treated waste, a description of how the requirements of R315-8-13.7(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under R315-8-13.11(a)(8) and R315-8-13.11(c)(2). This information should be included in the closure plan, and, where applicable, the post-closure care plan submitted under R315-3-5(b)(13).

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of R315-8-13.12 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how R315-8-13.13 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-13.14. This submission must address the following items as specified in R315-8-13.14:

(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.

#### 6.7 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LANDFILLS

For facilities that dispose of hazardous waste in landfills, except as otherwise provided in R315-8-14.1.

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of R315-8-2.10, R315-8-14.2., R315-8-14.3, and R315-8-14.12, addressing the following items:

(1)(i) The liner system, except for an existing portion of a landfill, if the landfill must meet the requirements of R315-8-14.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-14.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of R315-8-14.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-14.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-14.12, and response action plan, if required under R315-8-14.3;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable.

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-14.3(a), (b), and (c). This information must be included in the inspection plan submitted under R315-3-5(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of R315-8-14.4(a) and (b). This information should be included in the inspection plan submitted under R315-3-5(b)(5).

(e) Detailed plans and engineering report describing the final cover which will be applied to each landfill or landfill cell at

closure in accordance with R315-8-14.11(a), and a description of how each landfill will be maintained and monitored after closure in accordance with R315-8-14.11(b). This information should be included in the closure and post-closure plans submitted under R315-3-5(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of R315-8-14.13 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how R315-8-14.14 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of R315-8-14.15 will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of R315-8-14.16 or R315-8-14.17 as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-14.18. This submission must address the following items as specified in R315-8-14.18:

(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.

#### 6.8 SPECIFIC PART B INFORMATION REQUIREMENTS FOR MISCELLANEOUS UNITS

For facilities that treat, store or dispose of hazardous waste in miscellaneous units except as otherwise provided in R315-8-16, which incorporates by reference 40 CFR 264.600.

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of R315-8-16, which incorporates by reference 40 CFR 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601 and the Executive Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of these exposures;

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data;

(e) Any additional information determined by the Executive Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601.

**6.9 SPECIFIC PART B INFORMATION REQUIREMENTS FOR PROCESS VENTS**

For facilities that have process vents to which R315-8-17 applies, which incorporates by reference 40 CFR Subpart AA of 264, the requirements of 40 CFR 270.24, 1991 ed., regarding information requirements for process vents are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

**6.10 SPECIFIC PART B INFORMATION REQUIREMENTS FOR EQUIPMENT**

For facilities that have equipment to which R315-8-18 applies, which incorporates by reference 40 CFR Subpart BB of 264, the requirements of 40 CFR 270.25, 1991 ed., regarding information requirements for equipment are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

**6.11 SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE**

For facilities that burn hazardous wastes in boilers and industrial furnaces which R315-14-7 applies, which incorporates by reference 40 CFR Subpart H, 266.100 through 266.112, the requirements of 40 CFR 270.22, 1991 ed., as amended by 56 FR 32688, July 17, 1991, are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

**6.12 SPECIFIC PART B INFORMATION REQUIREMENTS FOR DRIP PADS**

For facilities that have drip pads to which R315-8-19 applies, which incorporates by reference 40 CFR Subpart W, 264.570 through 264.575, the requirements of 40 CFR 270.26, 1991 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

**6.13 SPECIFIC PART B INFORMATION REQUIREMENTS FOR AIR EMISSION CONTROLS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS**

The requirements as found in 40 CFR 270.27 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference.

**6.14 PART B INFORMATION REQUIREMENTS FOR POST-CLOSURE PERMITS**

For post-closure permits, the owner or operator is required to submit only the information specified in R315-3-5(b)(1), (4), (5), (6), (11), (13), (14), (16), (18), (19), and R315-3-7(a) and (b), unless the Executive Secretary determines that additional information from R315-3-5, R315-3-6.2, which incorporates by reference 40 CFR 270.16, R315-3-6.3, R315-3-6.4, R315-3-6.6, or R315-3-6.7 is necessary. The owner or operator is required to

submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in R315-3-3(s).

**R315-3-24. Draft Plan Approval.**

(a) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft plan approval or to deny the application.

(b) If the Executive Secretary tentatively decides to deny the plan, he shall issue a notice of intent to deny. A notice of intent to deny the plan approval application is a type of draft plan approval which follows the same procedures as any draft plan approval prepared under this section. If the Executive Secretary's final decision is that the tentative decision to deny the plan approval application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft plan approval under R315-3-24(c).

(c) If the Executive Secretary decides to prepare a draft plan approval, he shall prepare a draft plan approval that contains the following information:

- (1) All conditions under R315-3-10 or R315-3-23;
- (2) All compliance schedules under R315-3-23 (e) and (f);
- (3) All monitoring requirements under R315-3-12; and
- (4) Standards for treatment, storage, or disposal or all and other plan approval conditions under R315-3-10.

(d) All draft plan approvals prepared by the Executive Secretary under this section shall be ~~accompanied by a statement of basis or fact sheet and shall be based on the administrative record~~ publicly noticed and made available for public comment. The Executive Secretary shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments.

**KEY: hazardous waste**

~~[December 15, 1998]~~1999

19-6-105

Notice of Continuation March 12, 1997

19-6-106



**Environmental Quality, Solid and Hazardous Waste**

**R315-5-10**

**Accumulation Time**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 21955

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change clarifies certain regulatory tests and reinstates certain

regulatory provisions that were previously contained in rules and later inadvertently removed concerning the reduction of organic air emissions from certain hazardous waste management activities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106  
 FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 262.34, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:  
 ♦THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.  
 ♦LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.  
 ♦OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.  
 COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 Environmental Quality  
 Solid and Hazardous Waste  
 Cannon Health Building  
 288 North 1460 West  
 PO Box 144880  
 Salt Lake City, UT 84114-4880, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.  
 R315-5. Hazardous Waste Generator Requirements.  
 R315-5-10. Accumulation Time.**

(a) These requirements as found in 40 CFR 262.34, [1996]1998 ed., as amended by [61 FR 59931, November 25, 1996]64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following addition.  
 (b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

**KEY: hazardous waste**  
**[July 15, 1997]1999** **19-6-105**  
**Notice of Continuation March 12, 1997** **19-6-106**



**Environmental Quality, Solid and  
 Hazardous Waste  
 R315-7  
 Interim Status Requirements for  
 Hazardous Waste Treatment, Storage,  
 and Disposal Facilities**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 21956  
 FILED: 04/13/1999, 08:58  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change modifies the requirement for a post-closure permit, to allow for the use of a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. The rule change also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program. This proposed rule change also clarifies certain regulatory tests and reinstates certain regulatory provisions that were previously contained in rules and later inadvertently removed concerning the reduction of organic air emissions from certain hazardous waste management activities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106  
 FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 265.110-121, 1998 ed.; 40 CFR 265.140-150, 1998 ed.; 40 CFR 265.440-445, 1996 ed.; 40 CFR 265.1080-1091, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.  
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.  
R315-7-13. Groundwater Monitoring.**

13.1 Applicability

(a) The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in

the uppermost aquifer underlying the facility, except as R315-7-8.1 and R315-7-13.1(c) provide otherwise.

(b) Except as R315-7-13.1(c) and (d) provide otherwise, the owner or operator shall install, operate, and maintain a groundwater monitoring system which meets the requirements of R315-7-13.2, and shall comply with R315-7-13.3 - R315-7-13.5. This groundwater monitoring program shall be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the groundwater monitoring sampling and analysis requirements of this section may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells, domestic, industrial, or agricultural, or to surface water. This demonstration shall be in writing, and shall be kept at the facility. This demonstration shall be certified by a qualified geologist or geotechnical engineer and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(ii) Unsaturated zone characteristics, i.e., geologic materials, physical properties, and depth to groundwater; and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics, i.e., geologic materials, physical properties, and rate of groundwater flow; and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes, or knows, that groundwater monitoring of indicator parameters in accordance with R315-7-13.2 and R315-7-13.3 would show statistically significant increases, or decreases in the case of pH, when evaluated under R315-7-13.4(b), he may install, operate, and maintain an alternate groundwater monitoring system, other than the one described in R315-7-13.2 and R315-7-13.3. If the owner or operator decides to use an alternate groundwater monitoring system he shall:

(1) Submit to the Board a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of R315-7-13.4(d)(3) for an alternate groundwater monitoring system;

(2) Initiate the determinations specified in R315-7-13.4(d)(4);

(3) Prepare and submit a written report in accordance with R315-7-13.4(d)(5);

(4) Continue to make the determinations specified in R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility; and

(5) Comply with the recordkeeping and reporting requirements in R315-7-13.5(d).

(e) The groundwater monitoring requirements of this section may be waived with respect to any surface impoundment that (1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristics under R315-2-9 or are listed as hazardous wastes in R315-2-10 only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must be

established, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) The Executive Secretary may replace all or part of the requirements of R315-7-13 applying to a regulated unit, as defined in R315-8-6, with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document, as defined in R315-3-3(s), where the Executive Secretary determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of R315-7-13 because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of R315-8-6.12(a).

#### 13.2 Groundwater Monitoring System

(a) A groundwater monitoring system shall be capable of yielding groundwater samples for analysis and shall consist of:

(1) Monitoring wells, at least one, installed hydraulically upgradient, i.e., in the direction of increasing static head from the limit of the waste management area. Their number, locations, and depths shall be sufficient to yield groundwater samples that are:

(i) Representative of background groundwater quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility.

(2) Monitoring wells, at least three, installed hydraulically downgradient, i.e., in the direction of decreasing static head, at the limit of the waste management area. Their number, locations, and depths shall ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

(b) Separate monitoring systems for each waste management component of the facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary perimeter.

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space, i.e., the space between the bore hole and well casing above the sampling depth shall be sealed with a suitable material, e.g., cement grout or bentonite slurry, to prevent contamination of samples and the ground water.

#### 13.3 Sampling and Analysis

(a) The owner or operator shall obtain and analyze samples from the installed groundwater monitoring system. The owner or operator shall develop and follow a groundwater sampling and analysis plan. He shall keep this plan at the facility. The plan shall include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures; and
- (4) Chain of custody control.

See "Procedures Manual for Groundwater Monitoring at Solid Waste Disposal Facilities," EPA-530/SW-611, August 1977 and "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979 for discussions of sampling and analysis procedures.

(b) The owner or operator shall determine the concentration or value of the following parameters in groundwater samples in accordance with R315-7-13.3(c) and (d):

(1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in R315-50-3, which incorporates by reference 40 CFR 265, Appendix III.

(2) Parameters establishing groundwater quality:

- (i) Chloride
- (ii) Iron
- (iii) Manganese
- (iv) Phenols
- (v) Sodium
- (vi) Sulfate

These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under R315-7-13.4(d).

(3) Parameters used as indicators of groundwater contamination:

- (i) pH
- (ii) Specific Conductance
- (iii) Total Organic Carbon
- (iv) Total Organic Halogen

(c)(1) For all monitoring wells, the owner or operator shall establish initial background concentrations or values of all parameters specified in R315-7-13.3(b). He shall do this quarterly for one year.

(2) For each of the indicator parameters specified in R315-7-13.3(b)(3), at least four replicate measurements shall be obtained

for each sample and the initial background arithmetic mean and variance shall be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells shall be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish groundwater quality shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(2) at least annually.

(2) Samples collected to indicate groundwater contamination shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(3) at least semiannually.

(e) Elevation of the groundwater surface at each monitoring well shall be determined each time a sample is obtained.

#### 13.4 Preparation, Evaluation, and Response

(a) The owner or operator shall prepare an outline of a groundwater quality assessment program. The outline shall describe a more comprehensive groundwater monitoring program, than that described in R315-7-13.2 and R315-7-13.3, capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

(b) For each indicator parameter specified in R315-7-13.3(b)(3), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with R315-7-13.3(d)(2) and compare these results with its initial background arithmetic mean. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Student's *t*-test at the 0.01 level of significance, see R315-50-1F(a), to determine statistically significant increases, and decreases, in the case of pH, over initial background.

(c)(1) If the comparisons for the upgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall submit this information in accordance with R315-7-13.5(a)(2)(ii).

(2) If the comparisons for downgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall then immediately obtain additional groundwater samples from those downgradient wells where a significant difference was detected, split the samples in two, and expeditiously obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under R315-7-13.4(c)(2) confirm the significant increase, or pH decrease, the owner or operator shall provide written notice to the Board--within seven days of the date of the confirmation--that the facility may be affecting groundwater quality.

(2) Within 15 days after the notification under R315-7-13.4(d)(1), the owner or operator shall develop and submit to the Board a specific plan, based on the outline required under R315-7-13.4(a) and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

(3) The plan to be submitted under R315-7-13.1(d)(1) or R315-7-13.4(d)(2) shall specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously-gathered groundwater quality information; and

(iv) A schedule of implementation.

(4) The owner or operator shall implement the groundwater quality assessment plan which satisfies the requirements of R315-7-13.4(d)(3), and, at a minimum, determine:

(i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and

(ii) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

(5) The owner or operator shall make his first determination under R315-7-13.4(d)(4) as soon as technically feasible, and, within 15 days after that determination submit to the Board a written report containing an assessment of the groundwater quality.

(6) If the owner or operator determines, based on the results of the first determination under R315-7-13.4(d)(4), that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in R315-7-13.3 and R315-7-13.4(b). If the owner or operator reinstates the indicator evaluation program, he shall so notify the Board in the report submitted under R315-7-13.4(d)(5).

(7) If the owner or operator determines, based on the first determination under R315-7-13.4(d)(4), that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he:

(i) Must continue to make the determinations required under R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility, if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under R315-7-13.4(d)(4), if the groundwater quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of R315-7-13, any groundwater quality assessment to satisfy the requirements of R315-7-13.4(d)(4) which is initiated prior to final closure of the facility shall be completed and reported in accordance with R315-7-13.4(d)(5).

(f) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), at least annually the owner or operator shall evaluate the data on groundwater surface elevations obtained under R315-7-13.3(e) to determine whether the requirements under R315-7-13.2(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that R315-7-13.2(a) is no longer satisfied, the owner or operator shall immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

#### 13.5 Recordkeeping and Reporting

(a) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses required in R315-7-13.3(c) and (d), the associated groundwater surface elevations required in R315-7-13.3(e), and the evaluations required in R315-7-13.4(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following groundwater monitoring information to the Board:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in R315-7-13.3(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in 40 CFR 265, Appendix III.

(ii) Annually: concentrations or values of the parameters listed in R315-7-13.3(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under R315-7-13.4(b). The owner or operator shall separately identify any significant differences from initial background found in the upgradient wells, in accordance with R315-7-13.4(c)(1). During the active life of the facility, this information shall be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: results of the evaluation of groundwater surface elevations under R315-7-13.4(f), and a description of the response to that evaluation, where applicable.

(b) If the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of R315-7-13.4(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Board a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report shall be submitted no later than March 1, following each calendar year.

#### **R315-7-14. Closure and Post-Closure.**

The requirements as found in 40 CFR 265 Subpart G (265.110 - 265.120), [1992]1998 ed., as amended by [57 FR 37194, August 18, 1992]63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Board" for all references to "Administrator" or "Regional Administrator".

(b) Substitute the word "appointee" for "employee."

(c) Substitute "Board" for "Agency."

(d) Substitute 19-6 for references to RCRA.

#### **R315-7-15. Financial Requirements.**

The requirements as found in 40 CFR 265 Subpart H (265.140 - 265.150), [1992]1998 ed., as amended by [57 FR 37194, August 18, 1992 and 57 FR 42832, September 16, 1992]63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Board" for all references to "Administrator" or "Regional Administrator."

(b) Substitute "Board" for "Agency" or "EPA".

(c) Substitute 19-6 for references to Sections of RCRA.

#### **R315-7-17. Tanks.**

The requirements as found in 40 CFR 265 Subpart J, 265.190-265.202, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Regional Administrator" found in 40 CFR 265 Subpart J with the exception of 40 CFR 265.193(g) and (h)(5), which will replace "Regional Administrator" with "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, [1990]1988, for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or within two years after December 16, 1988, for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988, for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988, for non-HSWA existing tank systems; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988, for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265.193(a)(5), "or December 16, 1988, for non-HSWA tank systems."

#### **R315-7-28. Drip Pads.**

The requirements of 40 CFR Subpart W Sections 265.440 through 265.445, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

#### **R315-7-30. Air Emission Standards for Tanks, Surface Impoundments, and Containers.**

The requirements as found in 40 CFR Subpart CC, Sections 265.1080 through 265.1091, [1997]1998 ed., as amended by [62 FR 64636, December 8, 1997]64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

**KEY: hazardous waste**  
~~[December 15, 1998]~~1999

Notice of Continuation March 12, 1997

19-6-105  
 19-6-106

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**Environmental Quality, Solid and  
 Hazardous Waste**

**R315-8**

**Standards for Owners and Operators of  
 Hazardous Waste Treatment, Storage,  
 and Disposal Facilities**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 21957  
 FILED: 04/13/1999, 08:58  
 RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule change modifies the requirement for a post-closure permit, to allow for the use of a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. The rule change also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program. This proposed rule change also clarifies certain regulatory tests and reinstates certain regulatory provisions that were previously contained in rules and later inadvertently removed concerning the reduction of organic air emissions from certain hazardous waste management activities.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 19-6-105 and 19-6-106  
**FEDERAL REQUIREMENT FOR THIS RULE:** 40 CFR 271.21(e)

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** 40 CFR 264.140-151, 1998 ed.; 40 CFR 264.1030-1036, 1998 ed.; 40 CFR 264.570-575, 1996 ed.; 40 CFR 264.1080-1091, 1998 ed.

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.
- ◆ **LOCAL GOVERNMENTS:** Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

◆ **OTHER PERSONS:** There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

Environmental Quality  
 Solid and Hazardous Waste  
 Cannon Health Building  
 288 North 1460 West  
 PO Box 144880  
 Salt Lake City, UT 84114-4880, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/15/1999

**AUTHORIZED BY:** Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.**  
**R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.**  
**R315-8-6. Groundwater Protection.**

**6.1 APPLICABILITY**

(a)(1) Except as provided in R315-8-6.1(b), R315-8-6 applies to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in R315-8-6.1(a)(2) for all wastes, or constituents thereof, contained in solid waste management units at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in R315-8-6.12. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982, hereinafter referred to as a "regulated unit", must comply with the requirements of R315-8-6.2 through R315-8-6.11 in lieu of R315-8-6.12 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer.

The financial responsibility requirements of R315-8-6.12 apply to regulated units.

(3) Groundwater monitoring shall be required at non-land disposal facilities as determined to be necessary and appropriate by the Executive Secretary.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under R315-8-6 if:

(1) The owner or operator is exempted under R315-8-1(e) or

(2) He operates a unit which the Board finds:

(i) Is an engineered structure.

(ii) Does not receive or contain liquid waste or waste containing free liquid.

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off.

(iv) Has both inner and outer layers of containment enclosing the waste.

(v) Has a leak detection system built into each containment layer.

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Board finds pursuant to R315-8-13.11(d) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of R315-8-13.9 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Board finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit, including the closure period and the post-closure care period specified under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a waste pile in compliance with R315-8-12.1(c).

(c) The regulations under this section apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in this section:

(1) Do not apply if the waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, if the owner or operator is conducting a detection monitoring program under R315-8-6.9;

(3) Apply during the compliance period under R315-8-6.7 the owner is conducting a compliance monitoring program under R315-8-6.10 or a corrective action program under R315-8-6.11.

(d) Requirements in this Section may apply to miscellaneous units when necessary to comply with R315-8-24, which incorporates by reference 40 CFR 264.601 - 264.603.

(e) The regulations of R315-8-6 apply to all owners and operators subject to the requirements of R315-3-3(s), when the Executive Secretary issues either a post-closure permit or an enforceable document, as defined in R315-3-3(s), at the facility. When the Executive Secretary issues an enforceable document, references in R315-8-6 to "in the plan approval" mean "in the enforceable document."

(f) The Executive Secretary may replace all or part of the requirements of R315-8-6.2 through R315-8-6.11 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the plan approval, or in an enforceable document, as defined in R315-3-3(s) where the Executive Secretary determines that:

(1) The regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of R315-8-6.2 through R315-8-6.11 because alternative requirements will protect human health and the environment.

#### 6.2 REQUIRED PROGRAMS

(a) Owners and operators subject to this section shall conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under R315-8-6.4, from a regulated unit are detected at the compliance point under R315-8-6.6, the owner or operator shall institute a compliance monitoring program under R315-8-6.10. Detected is defined as statistically significant evidence of contamination as described in R315-8-6.9(f);

(2) Whenever the groundwater protection standard under R315-8-6.3, is exceeded, the owner or operator shall institute a corrective action program under R315-8-6.11. "Exceeded" is defined as statistically significant evidence of increased contamination as described in R315-8-6.10(d);

(3) Whenever hazardous constituents under R315-8-6.4, from a regulated unit exceed concentration limits under R315-8-6.5 in groundwater between the compliance point under R315-8-6.6 and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under R315-8-6.11; or

(4) In all other cases, the owner or operator shall institute a detection monitoring program under R315-8-6.9.

(b) The Executive Secretary will specify in the facility plan approval the specific elements of the monitoring and response program. The Executive Secretary may include one or more of the programs identified in R315-8-6.2(a) in the facility plan approval as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Executive Secretary will consider the potential adverse effects on human health and the environment that might occur before final

administrative action on a plan approval modification application to incorporate this type of a program could be taken.

6.3 GROUNDWATER PROTECTION STANDARD

The owner or operator shall comply with conditions specified in the facility plan approval that are designed to ensure that hazardous constituents under R315-8-6.4 that are detected in the groundwater from a regulated unit do not exceed the concentration limits under R315-8-6.5 in the uppermost aquifer underlying the waste management area beyond the point of compliance under R315-8-6.6 during the compliance period under R315-8-6.7. The Executive Secretary will establish this groundwater protection standard in the facility plan approval when hazardous constituents have been detected in the groundwater.

6.4 HAZARDOUS CONSTITUENTS

(a) The Executive Secretary will specify in the facility plan approval the hazardous constituents to which the groundwater protection standard of R315-8-6.3 applies. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Executive Secretary has excluded them under paragraph 8.6.4(b).

(b) The Executive Secretary will exclude an R315-50-10 constituent from the list of hazardous constituents specified in the facility plan approval if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Executive Secretary will consider the following:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.4(b) about the use of groundwater in the area around the facility, the Executive Secretary will consider any identification of underground sources of drinking water.

6.5 CONCENTRATION LIMITS

(a) The Executive Secretary will specify in the facility plan approval concentration limits in the groundwater for hazardous constituents established under R315-8-6.4. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the groundwater at the time that limit is specified in the plan approval; or

(2) For any of the constituents listed in Table 1, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

TABLE 1  
Maximum Concentration of Constituents for Groundwater Protection

CONSTITUENT	MAXIMUM CONCENTRATION(1)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin	(1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo,endo-5,8-dimethano naphthalene)
	0.0002
Lindane	(1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)
	0.004
Methoxychlor	(1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)
	0.1
Toxaphene	(C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)
	0.005
2,4-D	(2,4-Dichlorophenoxyacetic acid)
	0.1
2,4,5-TP Silvex	(2,4,5-Trichlorophenoxypropionic acid)
	0.01

(3) Shall not exceed an alternate limit established by the Executive Secretary under R315-8-6.5(b).

(b) The Executive Secretary will establish an alternate concentration limit for a hazardous constituent if they find that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate

concentration limit is not exceeded. In establishing alternate concentration limits, the Executive Secretary will consider the following factors:

(1) Potential adverse effects on groundwater quality, considering:

- (i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
- (ii) The hydrogeological characteristics of the facility and surrounding land;
- (iii) The quantity of groundwater and the direction of groundwater flow;
- (iv) The proximity and withdrawal rates of groundwater users;
- (v) The current and future uses of groundwater in the area;
- (vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
- (vii) The potential for health risks caused by human exposure to waste constituents;
- (viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
- (ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically connected surface water quality, considering:

- (i) The volume and physical and chemical characteristics of the waste in the regulated unit;
- (ii) The hydrogeological characteristics of the facility and surrounding land;
- (iii) The quantity and quality of groundwater, and the direction of groundwater flow;
- (iv) The patterns of rainfall in the region;
- (v) The proximity of the regulated unit to surface waters;
- (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
- (vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
- (viii) The potential for health risks caused by human exposure to waste constituents;
- (ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
- (x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.5(b) about the use of groundwater in the area around the facility the Board will consider any identification of underground sources of drinking water.

#### 6.6 POINT OF COMPLIANCE

(a) The Executive Secretary will specify in the facility plan approval the point of compliance at which the groundwater protection standard of R315-8-6.3 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

#### 6.7 COMPLIANCE PERIOD

(a) The Executive Secretary will specify in the facility plan approval the compliance period during which the groundwater protection standard of R315-8-6.3 applies. The compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to plan approval and the closure period.

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of R315-8-6.9.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in R315-8-6.7(a), the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

#### 6.8 GENERAL GROUNDWATER MONITORING REQUIREMENTS

The owner or operator shall comply with the following requirements for any groundwater monitoring program developed to satisfy R315-8-6.9, R315-8-6.10, or R315-8-6.11:

(a) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background water that has not been affected by leakage from a regulated unit;

(i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(2) represent the quality of groundwater passing the point of compliance; and

(3) allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the bore hole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(d) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures; and
- (4) Chain of custody control.

(e) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the plan approval will be collected from background wells and wells at the compliance point. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size should be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility plan approval which shall be specified in the unit plan approval upon approval by the Executive Secretary. This sampling procedure should be:

(1) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(2) an alternate sampling procedure proposed by the owner or operator and approved by the Executive Secretary.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent, upon approval by the Executive Secretary, will be specified in the unit plan approval. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits, pql's, are used in any of the following statistical procedures to comply with R315-8-6.8(i)(5), the pql shall be proposed by the owner or operator and approved by the Executive Secretary. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in R315-8-6.8(i).

(1) a parametric analysis of variance, ANOVA, followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) an analysis of variance, ANOVA, based on ranks followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation

and testing of the contrasts between compliance well's median and the background median levels for each constituent;

(3) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(4) a control chart approach that gives control limits for each constituent;

(5) another statistical test method submitted by the owner or operator and approved by the Executive Secretary.

(i) Any statistical method chosen under R315-8-6.8(h) for specification in the unit plan approval shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, predictions intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Executive Secretary if he finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Executive Secretary if he finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit, pql, approved by the Executive Secretary under R315-8-6.8(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with R315-8-6.8(g) including actual levels of constituents shall be maintained in the facility operating record. The Executive Secretary will specify in the plan approval when the data shall be submitted for review.

#### 6.9 DETECTION MONITORING PROGRAM

An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor for indicator parameters, e.g., specific conductance, pH, total organic carbon, or total organic halogen, waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Executive Secretary will specify the parameters or constituents to be monitored in the facility plan approval after considering the following factors:

- (1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;
- (2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;
- (3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and
- (4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b), and (c).

(c) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the plan approval pursuant to R315-8-6.9(a) in accordance with R315-8-6.9(g). The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under R315-8-6.8(h).

(d) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the plan approval under R315-8-6.9(a) in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semiannually during detection monitoring.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the plan approval pursuant to R315-8-6.9(a) at a frequency specified under R315-8-6.9(d).

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method specified in the plan approval under R315-8-6.8(h). This method shall compare data collected at the compliance point to the background groundwater quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of contamination at each

monitoring well as the compliance point within a reasonable period of time after completion of sampling. The Executive Secretary will specify in the facility plan approval what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to R315-8-6.9(f) that there is statistically significant evidence of contamination for chemical parameters of hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he shall:

(1) notify the Executive Secretary of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, are present, and if so, in what concentration;

(3) for any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, compounds found in the analysis pursuant to R315-8-6.9(g)(2), the owner or operator may resample within one month and repeat the analysis for these compounds detected. If the results for the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to R315-8-6.9(g)(2), the hazardous constituents found during this initial R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis will form the basis for compliance monitoring;

(4) within 90 days, submit to the Executive Secretary an application for a plan approval modification to establish a compliance monitoring program meeting the requirements of R315-8-6.10. The application must include the following information;

(i) an identification of the concentration of any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of R315-8-6.10;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of R315-8-6.10;

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under R315-8-6.10(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under R315-8-6.5(b); and

(5) within 180 days, submit to the Executive Secretary:

(i) all data necessary to justify an alternate concentration limit sought under R315-8-6.5(b); and

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirement of R315-8-6.11, unless:

(A) all hazardous constituents identified under R315-8-6.9(g)(2) are listed in R315-8-6.5, Table 1 and their concentrations do not exceed their respective values given in that table; or

(B) the owner or operator has sought an alternate concentration limit under R315-8-6.5(b) for every hazardous constituent identified under R315-8-6.9(g)(2).

(6) If the owner or operator determines, pursuant to R315-8-6.9(f), that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under R315-8-6.9(g)(6) in addition to, or in lieu of, submitting a plan approval modification application under R315-8-6.9(g)(4); however, the owner or operator is not relieved of the requirement to submit a plan approval modification application within the time specified in R315-8-6.9(g)(4) unless the demonstration made under R315-8-6.9(g)(6) successfully shows that a source other than the regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under R315-8-6.9(g)(6), the owner or operator shall:

(i) notify the Executive Secretary in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the Executive Secretary an application for a plan approval modification to make any appropriate changes to the detection monitoring program facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under R315-8-6.9.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he shall, within 90 days, submit an application for a plan approval modification to make any appropriate changes to the program.

#### 6.10 COMPLIANCE MONITORING PROGRAM

An owner or operator required to establish a compliance monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility plan approval including:

(1) A list of the hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6;

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b) and (c).

(c) The Executive Secretary will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with R315-8-6.8(g) and (h).

(1) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous waste constituent in accordance with R315-8-6.8(g).

(2) The owner or operator shall record groundwater analytical data as measured and in form necessary for the determination of statistical significance under R315-8-6.8(h) for the compliance period of the facility.

(d) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the plan approval, pursuant to R315-8-6.10(a), at a frequency specified under R315-8-6.10(f).

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method specified in the plan approval under R315-8-6.5. The method shall compare data collected at the compliance point to a concentration limit developed in accordance with R315-8-6.8(h).

(2) The owner or operator shall determine whether there is statistically significant evidence of increase contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility plan approval, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semi-annually during the compliance period of the facility.

(g) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in R315-50-14, which incorporates by reference 40 CFR, Appendix IX, at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in R315-8-6.9(f). If the owner or operator finds R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituents in the groundwater that are not already identified in the plan approval as monitoring constituents, the owner or operator may resample within one month and repeat the R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Executive Secretary within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the Executive Secretary within seven days after completion of the initial analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to R315-8-6.10(d) that any concentration limits under R315-8-6.5 are being exceeded at any monitoring well at the point of compliance he shall:

(1) Notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate which concentration limits have been exceeded;

(2) Submit to the Executive Secretary an application for a plan approval modification to establish a corrective action program meeting the requirements of R315-8-6.11, within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Executive Secretary under R315-8-6.9(h)(5). The application shall at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the plan approval under R315-8-6.10(a); and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. The groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to R315-8-6.10(d), that the groundwater concentration limits under R315-8-6.10 are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under R315-8-6.10(i), the owner or operator shall:

(1) Notify the Executive Secretary in writing within seven days that he intends to make a demonstration under R315-8-6.10(i);

(2) Within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a plan approval modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a plan approval modification to make any appropriate changes to the program.

#### 6.11 CORRECTIVE ACTION PROGRAM

An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility plan approval, including:

(1) A list of hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6; and

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan approval will specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Executive Secretary will specify that time period in the facility plan approval. If a facility plan approval includes a corrective action program in addition to a compliance monitoring program, the plan approval will specify when the corrective action will begin and the requirement will operate in lieu of R315-8-6.10(i)(2).

(d) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. The monitoring program may be based on the requirements for a compliance monitoring program under R315-8-6.10 and shall be as effective as that program in determining compliance with the groundwater protection standard under R315-8-6.3 and in determining the success of a corrective action program under R315-8-6.11(e), where appropriate.

(e) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under R315-8-6.4 that exceed concentration limits under R315-8-6.5 in groundwater:

(1) between the compliance point under R315-8-6.6 and the downgradient facility property boundary; and

(2) beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis.

(3) Corrective action measures under R315-8-6.11(e) shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under R315-8-6.4 is reduced to levels below their respective concentration limits under R315-8-6.5.

(f) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area, including the closure period if he can demonstrate, based on data from the groundwater

monitoring program under R315-8-6.11(d), that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

(g) The owner or operator shall report in writing to the Executive Secretary on the effectiveness of the corrective action program. The owner or operator shall submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a plan approval modification to the program.

#### 6.12 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

(a) The owner or operator of a facility seeking a plan approval for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the plan approval in accordance with R315-8-6-12 and R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553. The plan approval will contain schedules of compliance for the corrective action, where such corrective action cannot be completed prior to issuance of the plan approval, and assurances of financial responsibility for completing the corrective action.

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis. Assurances of financial responsibility for corrective action must be provided.

#### R315-8-7. Closure and Post Closure.

The requirements as found in 40 CFR Subpart G, 264.110 - 264.120, [1992]1998 ed., as amended by [57 FR 37194, August 18, 1992]63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(1) Substitute "Board" for all federal regulation references made to "Regional Administrator" except in 264.112 where "Regional Administrator" and "Director" means "Executive Secretary".

(2) Substitute R315-3 for all general reference made to 40 CFR 124 and 270.

(3) Substitute "plan approval" for all federal references made to "permit".

(4) Substitute 19-6-101 et seq. for all references made to RCRA.

#### R315-8-8. Financial Requirements.

The requirements as found in 40 CFR Subpart H, 264.140 - 264.151, [1994]1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(1) Substitute "Board" for all references to "Regional Administrator".

(2) Substitute 19-6 for all references to RCRA.

#### R315-8-10. Tanks.

The requirements as found in 40 CFR 264, Subpart J, 264.190 - 264.199, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator" found in subpart J except paragraph 264.193(g) which should have "Regional Administrator" replaced by "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, [1990]1988 for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988 for non-HSWA existing tank systems; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988 for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265-193(a)(5), "or December 16, 1988 for non-HSWA tank systems."

#### R315-8-17. Air Emission Standards for Process Vents.

The requirements as found in 40 CFR Subpart AA Sections 264.1030 through 264.1036, [1997]1998 ed., as amended by [62 FR 64636, December 8, 1997]64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

#### R315-8-19. Drip Pads.

The requirements as found in 40 CFR Subpart W Sections 264.570 through 264.575, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

**R315-8-22. Air Emission Standards for Tanks, Surface Impoundments, and Containers.**

The requirements as found in 40 CFR Subpart CC, Sections 264.1080 through 264.1091, [1997]1998 ed., as amended by [62 FR 64636, December 8, 1997]64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

**KEY: hazardous waste**

~~[December 15, 1998]~~1999

Notice of Continuation March 12, 1997

19-6-105

19-6-106

Environmental Quality, Solid and Hazardous Waste

**R315-12**

Administrative Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21958

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Define an appeal under the Used Oil Management Act.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change defines what an appeal under the Used Oil Management Act means.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 63-46b-4

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: Since the change in the rule only provides a definition, there will be no cost or saving impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-12. Administrative Procedures.**

**R315-12-1. Application of Rule.**

(a) This rule applies to proceedings under Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act), Title 19, Chapter 6, Part 5 (Solid Waste Management Act), Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal), Title 19, Chapter 6, Part 7 (Used Oil Management Act), and Title 26, Chapter 32a (Waste Tire Recycling).

(b) For purposes of these rules, an appeal under the Used Oil Management Act shall mean the process of agency decision making under the Utah Administrative Procedures Act (UAPA), Section 63-46b-0.5 through 63-46b-11, and the standards, deadlines, procedures, and other requirements for an appeal shall be same as the standards, deadlines, procedures, and other requirements for contesting the validity of an initial order or violation under R315-12.

**R315-12-3. Contesting the Validity of an Initial Order or Notice of Violation Issued by the Executive Secretary.**

3.1 CONTESTING THE VALIDITY OF AN INITIAL ORDER OR NOTICE OF VIOLATION -- REQUEST FOR AGENCY ACTION

(a) The validity of initial orders or notices of violation described in R315-12-2 may be contested by filing a written Request for Agency Action with the Board:

Solid and Hazardous Waste Control Board  
Division of Solid and Hazardous Waste  
288 North 1460 West  
PO Box 144880  
Salt Lake City, Utah 84114-4880.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

3.2 RESPONSE TO REQUEST FOR AGENCY ACTION

Notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

3.3 UAPA GOVERNS SUBSEQUENT PROCEEDINGS

A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA. Section 63-46b-1(2)(k) of UAPA.

KEY: hazardous waste

~~December 15, 1995~~ 1999

63-46b-4

Notice of Continuation November 4, 1996



Environmental Quality, Solid and Hazardous Waste  
**R315-13-1**  
Land Disposal Restrictions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21959

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change lists four petroleum refining process wastes as hazardous (K169 - K172), it makes zinc fertilizers subject to previous treatment standards for toxic metals found in 40 CFR 268.41, 1990 ed. The rule change revises the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. The rule change extends the date of compliance for treatment standards only for secondary lead slags exhibiting the toxicity characteristic for one or more metals that are generated from thermal recovery of lead-bearing wastes. And finally, the proposed rule change prohibits from land disposal spent potliners from primary aluminum reduction unless the wastes have been treated in compliance with the numerical standards contained in the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 268, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-13. Land Disposal Restrictions.**

**R315-13-1. Land Disposal Restrictions.**

The requirements as found in 40 CFR 268, [1997]1998 ed., as amended by 63 FR 42110, August 6, 1998, 63 FR 46332, August 31, 1998, 63 FR 47409, September 4, 1998, 63 FR 48124, September 9, 1998, and 63 FR 51254, September 24, 1998, are adopted and incorporated by reference including Appendices IV, VI, VII, VIII, IX, and X as amended by 62 FR 37694, July 14, 1997, 62 FR 45568, August 28, 1997, 62 FR 64504, December 5, 1997, 63 FR 24596, May 4, 1998, and 63 FR 28555, May 26, 1998, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) Substitute the words "plan approval" for all federal references made to "permit".

(c) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(d) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

(e) The universal wastes listed at 40 CFR 268.1(f) are exempted from the requirements under 40 CFR 268.7 and 268.50, including mercury-containing wastes, as described in R315-16-1.6.

**KEY: hazardous waste**

~~December 15, 1998~~ 1999

Notice of Continuation November 4, 1996

19-6-106

19-6-105



**Environmental Quality, Solid and Hazardous Waste**

**R315-14**

**Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21960

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change applies the universal treatment standards to the newly listed petroleum refining wastes (K169 - K172) and it makes three corrections to regulations governing the management of spent lead-acid batteries that are reclaimed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 266.80, 1998 ed.; 40 CFR 266.100-266.112, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT

THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**R315. Environmental Quality, Solid and Hazardous Waste. R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.**

**R315-14-6. Spent Lead-Acid Batteries Being Reclaimed.**

The requirements regarding spent lead-acid batteries being reclaimed of 40 CFR 266.80, [1994]1998 ed., as amended by [60 FR 25540, May 11, 1995]63 FR 71225, December 24, 1998, are adopted and incorporated by reference.

**R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces.**

The requirements as found in 40 CFR 266, Subpart H, 266.100 - 266.112, including Appendices I - XIII, [~~1997~~1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference.

**KEY: hazardous waste**

~~[February 20, 1998]1999~~

Notice of Continuation March 12, 1997

19-6-105

19-6-106

◆ ————— ◆

**Environmental Quality, Solid and  
Hazardous Waste  
R315-16-1  
General**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21961

FILED: 04/13/1999, 08:58

RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Adopt equivalent federal regulations to maintain equivalency with the Environmental Protection Agency (EPA) rules and retain authorization.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule change corrects the definition of a small quantity universal waste handler.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and 19-6-106

**FEDERAL REQUIREMENT FOR THIS RULE:** 40 CFR 271.21(e)

**ANTICIPATED COST OR SAVINGS TO:**

◆**THE STATE BUDGET:** Since the changes in the rule do not affect state entities and the enforcement of the rule will not change, there will be no cost or saving impact.

◆**LOCAL GOVERNMENTS:** Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.

◆**OTHER PERSONS:** There will be no additional costs or savings impacts beyond that which is already required by adherence to equivalent federal regulations because the rule change implements current statutory and regulatory requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for affected persons will not change since the rule changes implement current statutory and regulatory requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact--Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

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**R315. Environmental Quality, Solid and Hazardous Waste.  
R315-16. Standards for Universal Waste Management.  
R315-16-1. General.**

**1.1 SCOPE**

(a) This rule establishes requirements for managing the following:

- (1) Batteries as described in section 1.2;
- (2) Pesticides as described in section 1.3;
- (3) Thermostats as described in section 1.4; and
- (4) Mercury-containing lamps as described in section 1.6.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

**1.2 APPLICABILITY - BATTERIES**

(a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section 1.7, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

- (1) Spent lead-acid batteries that are managed under R315-14-6.
- (2) Batteries, as described in section 1.7, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section 1.7, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(2) An unused battery becomes a waste on the date the handler decides to discard it.

### 1.3 APPLICABILITY - PESTICIDES

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section 1.7, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-11. R315-5-11 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

### 1.4 APPLICABILITY - MERCURY THERMOSTATS

(a) Thermostats covered under R315-16. The requirements of this section apply to persons managing thermostats, as described in section 1.7, except those listed in paragraph (b) of this section.

(b) Thermostats not covered under R315-16. The requirements of this section do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under R315-2. Paragraph (c) of this section describes when thermostats become wastes.

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste thermostats.

(1) A used thermostat becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

### 1.5 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section 1.7; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section 1.7.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

### 1.6 APPLICABILITY - MERCURY-CONTAINING LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section 1.7, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of this rule do not apply to persons managing the following lamps:

(1) Lamps, as described in section 1.7, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(2) Lamps, as described in section 1.7, that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in section 2.12.

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused lamp becomes a waste on the date the handler discards it.

#### 1.7 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(c) "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet, UV, visible, and infra-red, IR, regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.

(d) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

(e) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively, or 35,000 or more mercury-containing lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste, or 35,000 mercury-containing lamps, is accumulated.

(g) "Mercury-containing lamp" or "lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp.

(h) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a

cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDC section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDC section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

(j) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate ~~more than~~ 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively, or less than 35,000 universal waste lamps, at any time.

(k) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

(l) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

(1) Batteries as described in section 16-1.2;

(2) Pesticides as described in section 16-1.3;

(3) Thermostats as described in section 16-1.4; and

(4) Mercury-containing lamps as described in section 16-1.6.

(m) "Universal Waste Handler":

(1) Means:

(i) A generator, as defined in this section, of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(n) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(o) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

**KEY: hazardous waste**  
**[February 20, 1998]1999**

**19-6-105**  
**19-6-106**

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING  
REGULAR BUSINESS HOURS, AT:  
Environmental Quality  
Solid and Hazardous Waste  
Cannon Health Building  
288 North 1460 West  
PO Box 144880  
Salt Lake City, UT 84114-4880, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Susan Toronto at the above address, by phone at (801) 538-  
6170, by FAX at (801) 538-6715, or by Internet E-mail at  
storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE  
BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO  
LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

**Environmental Quality, Solid and  
Hazardous Waste**

**R315-50-9**

**Basis for Listing Hazardous Wastes**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 21962  
FILED: 04/13/1999, 08:58  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt  
equivalent federal regulations to maintain equivalency with  
the Environmental Protection Agency (EPA) rules and retain  
authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule  
change is listing four petroleum refining process wastes as  
hazardous (K169 - K172).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS  
RULE: Sections 19-6-105 and 19-6-106  
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE  
FOLLOWING MATERIAL: 40 CFR 261, Appendix VII, 1998 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since the changes in the rule do not  
affect state entities and the enforcement of the rule will not  
change, there will be no cost or saving impact.

❖LOCAL GOVERNMENTS: Since the changes in the rule do not  
affect local governments and the enforcement of the rule will  
not change, there will be no cost or saving impact.

❖OTHER PERSONS: There will be no additional costs or  
savings impacts beyond that which is already required by  
adherence to equivalent federal regulations because the rule  
change implements current statutory and regulatory  
requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance  
costs for affected persons will not change since the rule  
change implements current statutory and regulatory  
requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT  
THE RULE MAY HAVE ON BUSINESSES: The proposed changes  
in this rule will have no fiscal impact on businesses beyond  
the current statutory and regulatory impact--Dianne R.  
Nielson, Ph.D.

**R315. Environmental Quality, Solid and Hazardous Waste.**  
**R315-50. Appendices.**  
**R315-50-9. Basis for Listing Hazardous Wastes.**

The requirements of 40 CFR 261, Appendix VII, [1997]1998  
ed., as amended by 63 FR [24596, May 4]42110, August 6, 1998,  
are adopted and incorporated by reference, with the following  
additions, excluding the constituents for which K064, K065, K066,  
K090, K091, and K160 are listed:

- 1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3,  
HT, L, T, and VX.

**KEY: hazardous waste**

**[December 15, 1998]1999**

**Notice of Continuation March 12, 1997**

**19-6-106**  
**19-6-108**  
**19-6-105**

**Insurance, Administration**  
**R590-89**  
**Unfair Claims Settlement Practices**  
**Rule**

**NOTICE OF PROPOSED RULE**  
(Repeal)

DAR FILE NO.: 21964  
FILED: 04/14/1999, 16:05  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The  
department is writing three separate rules to replace this one  
(R590-190, R590-191, and R590-192). The new rules will

focus on separate lines of insurance. One rule focusing on life insurance, another on health and disability, and another on property, liability and title insurance. This will make the new rules more workable and applicable for each line of insurance.

**(DAR Note:** The change in proposed rule (CPR) for R590-190 is found under DAR No. 21767 in the April 15, 1999, issue of the *Utah State Bulletin*. The original proposed new rule upon which the CPR was based was published in the January 15, 1999, *Utah State Bulletin*. The CPR for R590-191 is found under DAR No. 21781 in the April 15, 1999, issue of the *Utah State Bulletin*. The original proposed new rule upon which the CPR was based was published in the February 1, 1999, *Utah State Bulletin*. The proposed new rule for R590-192 is found under DAR No. 21965 in this *Bulletin*.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-26-301, 31A-26-303, 31A-21-312, and 31A-2-308

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The repeal of this rule will not affect the state's budget. Fees and fines related to the new rules have not changed nor have their general procedures and practices.

❖LOCAL GOVERNMENTS: Unfair claims settlement practices are not regulated by local government, therefore, local governments will not be affected by this repeal.

❖OTHER PERSONS: The repeal of this rule and issuance of three new rules to replace it will create no financial costs or saving for the life, property, liability and title industry and their customers. However, there will be some cost savings to the health and disability industry resulting from a change in the claim notification requirement thus reducing the number of notices an insurer is required to send their claimants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule and issuance of three new rules in place of it will create no financial costs or saving for the life, property, liability and title industry and their customers. However, there will be some cost savings to the health and disability industry resulting from a change to the claim notification requirement, thus reducing the number of notices an insurer is required to mail to their claimants. The savings will vary from carrier to carrier depending on the time they take to process their claims.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Insurance Department sees no impact on the insurance industry and their customers due to the repeal of Rule R590-89. As noted above, there will be some cost savings among our health and disability carriers, but probably not enough to reduce the premiums of their insureds.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Insurance

Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

### **R590. Insurance, Administration.**

#### **[R590-89. Unfair Claims Settlement Practices Rule:**

##### **R590-89-1. Authority:**

~~— This rule is promulgated pursuant to Sections 31A-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. Further authority to provide for timely payment of claims is provided by Section 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to sections 31A-26-301 and 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Section 31A-26-303(4). Section 31A-2-308(1)(a) provides for penalties for any person who violates any insurance statute or rule.~~

##### **R590-89-2. Purpose:**

~~— The business of insurance continues to be one of public trust assumed by persons accepting licenses to operate in this State and inherently includes a duty to treat claimants fairly, equitably and in good faith. The breach of such duty is considered to be an unfair or deceptive business practice and injurious to the insuring public. The purpose of this rule is to respond to the volume of complaints arising from claims settlement practices by affirmatively establishing standards of equity and good faith to guide licensees in the settlement of claims. Furthermore, as the standards are properly followed by all licensees, it should encourage future self-regulation of the insurance industry. It is intended that this rule will help to establish parity between the public and professional insurance licensees and facilitate the prompt and fair settlement of insurance claims.~~

##### **R590-89-3. Scope:**

~~— This rule defines certain minimum standards which, if violated, may constitute unfair claims settlement practices. All agency actions will be conducted pursuant to the Utah Administrative Procedures Act. Penalties for violation of this rule shall be in accordance with Section 31A-2-308, Utah Code. This rule applies to all persons and to all insurance policies, contracts and transactions. Individual agents, brokers, consultants, and adjusters are subject to these standards, as well as other persons herein defined. This rule is not exclusive, and other acts, not herein~~

specified, may also be considered to be violations of the insurance code or other rules. This rule is regulatory in nature and is not intended to create a private right of action.

**R590-89-4. Definitions:**

— A. "Agent" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

— B. "Claim" means, for the purpose of this Rule, a request or a demand on an insurer, whether by a first party or a third party, for payment of benefits according to the terms of an insurance policy.

— C. "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;

— D. "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract. For the purposes of this Rule, certificate holders of group disability policies are considered to be first party claimants;

— E. "General business practice" means a pattern of conduct.

— F. "Insurance policy" or "insurance contract" shall mean any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person;

— G. "Insurer" means a person who may issue or who does issue any insurance policy or insurance contract within this state, whether or not licensed to do so.

— H. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract;

— I. "Notice of Loss" shall be that notice which is in accordance with policy provisions and insurer practices. "Notice of Loss" shall include "Special Notice of Loss" as defined herein. Notice of loss shall also include a Notice of Default or Notice of Delinquency to mortgage insurers.

— J. "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

— K. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, self-insurer, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, consultants and adjusters.

— L. "Proof of Loss" shall mean, reasonable documentation by the insured as to the facts of the loss and the amount of the claim.

— M. "Special Notice of Loss" shall mean Notice of Loss required to be given by means other than first class mail, such as by telephone or facsimile, or at times which could be other than during normal business hours.

— N. "Specific Disclosure" shall mean notice to the insured by means of policy provisions in boldface type or a separate written notice mailed or delivered to the insured.

— O. "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim

against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.

**R590-89-5. Notice of Loss:**

— A. Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

— B. Notice of Loss may be given by an insured to any appointed agent, authorized adjuster, or other authorized representative of an insurer unless the insurer clearly directs otherwise by means of Specific Disclosure as defined herein.

— C. Subject to policy provisions a requirement of written or Special Notice of Loss may be waived by any appointed agent, authorized adjuster, or other authorized representative of the insurer.

— D. If Special Notice of Loss is required, the insured shall be advised by Specific Disclosure, as defined herein.

— E. Insurance policies shall not require Notice of Loss to be given in a manner which is inconsistent with the actual practice of the insurer. An insurer shall not generally conduct business on the basis of waivers of right, enforcing the terms of the contract only in exceptional circumstances. For example, if the general practice of the insurer is to accept Notice of Loss by telephone, the policy shall reflect that practice, and not require that the insured furnish "immediate written notice" of loss.

**R590-89-6. Proof of Loss:**

— A. Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

— B. The requirements of Section 31A-21-312(1)(a) and (b) may be satisfied in practice and do not require that the actual language of the above-noted sections be recited in the policy.

**R590-89-7. Unfair Methods, Deceptive Acts and Practices Defined:**

The following are hereby defined as unfair methods of competition and unfair or deceptive acts and practices in the business of insurance, and the commission of which are violations of this rule:

— A. Denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission.

— B. Failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial.

— C. Compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims.

— D. Failing to deliver a copy of standards for prompt investigation of claims to the Insurance Department when requested to do so.

— E. Refusing to pay claims without conducting a reasonable investigation.

— F. Offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources.

— G. Making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated.

— H. Failing to pay claims within 30 days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance.

— I. Refusing payment of a claim solely on the basis of an insured's request to do so unless:

— 1. the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or

— 2. the insured is granted the right under the policy of insurance to consent to settlement of claims.

— J. Advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim.

— K. Misleading a claimant as to the applicable statute of limitations.

— L. Requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment.

— M. Deducting from a loss or claims payment made under one policy those premiums owed by the insured on another policy unless the insured consents.

— N. Failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions.

— O. Issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability.

— P. Refusing to provide a written basis for the denial of a claim upon demand of the insured.

— Q. Denial of a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage.

— R. Refusal to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited by these rules, in claims settlement or claims payment.

— S. When an automobile insurer represents both a tortfeasor and a claimant:

— a. failing to advise a claimant under any coverage that the same insurance company represents both the tortfeasor and the claimant as soon as such information becomes known to the insurer;

— b. allocating medical payments to the tortfeasor's liability coverage before exhausting a claimant's personal injury protection coverage.

— T. Failure to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules.

#### **R590-89-8. File and Record Documentation:**

— The insurer's claim files shall be subject to examination by the Commissioner or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

#### **R590-89-9. Misrepresentation of Policy Provisions: Prohibited Acts Applicable to All Insurers:**

— A. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented, including loss of use and household services.

— B. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

— C. No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

#### **R590-89-10. Failure to Acknowledge Pertinent Communications:**

— A. Every insurer, upon receiving notification of a claim shall, within 15 days, acknowledge the receipt of such notice unless payment is made within such period of time, or unless the insurer has a reason acceptable to the Insurance Department as to why such acknowledgment cannot be made within the time specified.

— B. Every insurer, upon receipt of an inquiry from the Insurance Department respecting a claim shall, within fifteen days of receipt of such inquiry, furnish the Department with a substantive response to the inquiry.

— C. A substantive response shall be made within 15 days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

— D. Every insurer, upon receiving notification of claim shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

#### **R590-89-11. Standards for Prompt Investigation of Claims:**

— Every insurer shall complete investigation of a claim within 45 days after notification of claim, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 45 days of its notification of such claim.

#### **R590-89-12. Minimum Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers:**

— A. The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

— B. Within 30 days after receipt by the insurer of properly executed notice of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the

acceptance or denial of the claim by the insurer unless the investigation cannot reasonably be completed within that time. If the investigation cannot be completed within 30 days the insurer shall so communicate to the claimant and shall continue to so communicate at least every 30 days until the claim is either paid or denied. No insurer shall deny a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. Any basis for the denial of a claim shall be noted in the insurer's claim file and must be communicated promptly and in writing to the claimant.

— C. Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice or investigation is overdue if not paid within 30 days. Any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer.

— D. If negotiations are continuing for settlement of a claim with a claimant, notice of expiration of statute of limitation or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

— E. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

— F. Proof of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

**R590-89-13. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance:**

— A. When the insurance policy provides for the adjustments and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

— (1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

— (2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:

— (a) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area; or

— (b) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.

— (3) When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections A(1) and A(2) of this section, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deductions for salvage, must be measurable, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

— B. Total loss settlements with a third party claimant shall be on the basis of the market value or actual cost of a comparable automobile at the time of loss. Settlement procedures shall be in accordance with paragraphs (2) and (3) of subsection A.

— C. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

— D. Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

— E. Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands initiated by the insurer. Subrogation recoveries may be shared on a proportionate basis with the first party claimant when an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse the first party claimant for the amount or share of the deductible when the full amount or share of the deductible has been recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised.

— F. If an insurer prepares or approves an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. If the insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

— G. When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

— H. When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

— I. Where coverage exists, loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, during the period the automobile is necessarily withdrawn from service to obtain parts or effect repair, or, in the event the automobile is a total loss and the claim has been timely made, during the period from the date of loss until a reasonable settlement offer has been made by the insurer. The insurer may not refuse to pay for loss of use for the period that

the insurer is examining the claim or making other determinations as to the payability of the loss, unless such delay reveals that the insurer is not liable to pay the claim. Loss of use payments shall be an amount in addition to the payment for the value of the automobile.

J. Subject to subsection A and B, an insurer shall fairly and equitably and in good faith attempt to compensate a claimant for all losses incurred under collision or comprehensive coverages. Such compensation shall be based at least, but not exclusively, upon the following standards:

1. An offer of settlement shall not be made exclusively on the basis of useful life of the part or vehicle damaged:

2. An estimate of the amount of compensation for the claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle.

3. Actual cash value shall take into account the cost of replacement of the vehicle and/or the part for which compensation is claimed:

4. An actual estimate of the true useful life remaining in the part or vehicle shall be taken into account in establishing the amount of compensation of a claim:

5. Actual cash value shall include taxes and other fees which shall be incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred:

K. An insurer may not demand reimbursement of Personal Injury Protection payments from a first-party insured of payments received by that party from a settlement or judgement against a third party:

**R590-89-14. Unfair Claims Settlement Practices Applicable to Automobile Insurance.**

The following acts or practices are defined as unfair claims settlement practices pertaining to automobile insurance:

A. Using as a basis for cash settlement with a claimant an amount which is less than the amount which the insurer would be charged if repairs were made, unless such amount is agreed to by the claimant or provided for by the insurance policy.

B. Refusing to settle a claim based solely upon the issuance or failure to issue a traffic citation by a police agency:

C. If an application for benefits is required by the insurer, failing to provide a section for each coverage under the policy under which the claimant can make a claim.

D. Failing to, in good faith, disclose all coverages, including loss of use, household services, and any other coverages available to the claimant.

E. Requiring a claimant to use only the insurer's claim service in order to perfect a claim:

F. If the insurer makes a deduction for the salvage value of a total loss retained by the claimant, failing to furnish the claimant with the name and address of the salvage dealer who will purchase the salvage for the amount deducted if so requested by the claimant:

G. Refusing to disclose policy limits when requested to do so by a claimant or claimant's attorney:

H. Using a release on the back of a check or draft which requires a claimant to release the company from obligation on further claims in order to process a current claim when the company knows or reasonably should know that there will be future liability on the part of the insurer:

I. Refusing to use a separate release of claims document rather than one on the back of a check or draft when requested to do so by a claimant:

J. Intentionally offering less money to a first party claimant than the claim is reasonably worth, a practice referred to as "low-balling."

K. Refusing to offer to pay claims based upon the Doctrine of Comparative Negligence without a reasonable basis for doing so:

L. In a bailment situation, imputing the negligence of a permissive user of a vehicle to the owner of the vehicle:

**R590-89-15. Penalties.**

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to fine, suspension, or revocation of their insurance license or Certificate of Authority, and/or any other penalties or measures as are determined by the commissioner in accordance with law. Any penalty imposed under this rule shall be commensurate with the violation committed and subject to the following provisions and limitations:

A. Separate and disparate penalties may be assessed insurer, organization and individual persons;

B. Frequency of occurrence and severity of detriment to the public shall be considered in determining a penalty;

C. No license or Certificate of Authority shall be suspended on the basis of a single violation; and

D. No revocation of license or Certificate of Authority shall occur except upon a finding of improper conduct as a general business practice:

**R590-89-16. Severability.**

If any provision or clause of this rule or the application thereof 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:

**R590-89-17. Effective Date.**

This rule shall take effect on September 14, 1989:

**KEY: insurance law**

<del>1989</del>	<del>31A-2-201</del>
<del>Notice of Continuation March 1, 1995</del>	<del>31A-26-301</del>
	<del>31A-26-303</del>
	<del>31A-21-312</del>
	<del>31A-2-308]</del>



Insurance, Administration  
**R590-192**  
Unfair Health Claims Settlement  
Practices Rule

**NOTICE OF PROPOSED RULE**

(New)

DAR FILE NO.: 21965

FILED: 04/14/1999, 16:05

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth minimum standards for the investigation and disposition of health claims arising under policies or certificates issued to residents of the State of Utah. The various provisions of this rule are intended to define procedures and practices which constitute unfair claims practices.

SUMMARY OF THE RULE OR CHANGE: The department currently has a rule, R590-89, that sets the standards for investigation and disposition of all types of insurance claims, life, health and accident, property and liability. R590-89 is being repealed and three new rules are being proposed (R590-190, R590-191, and R590-192). This new rule focuses only on health and disability insurance claims settlement practices. The various provisions of this rule are intended to define procedures and practices which constitute unfair claims settlement practices.

**(DAR Note:** The proposed repeal of R590-89 is found under DAR No. 21964 in this *Bulletin*. The change in proposed rule (CPR) for R590-190 is found under DAR No. 21767 in the April 15, 1999, issue of the *Utah State Bulletin*. The original proposed new rule upon which the CPR was based was published in the January 15, 1999, *Utah State Bulletin*. The CPR for R590-191 is found under DAR No. 21781 in the April 15, 1999, issue of the *Utah State Bulletin*. The original proposed new rule upon which the CPR was based was published in the February 1, 1999, *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-1-301, 31A-2-201, 31A-2-204, 31A-2-308, 31A-21-312, 31A-26-301, and 31A-26-303

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be no change to the state budget since no new fees will be required or old fees eliminated.

❖LOCAL GOVERNMENTS: This rule does not affect local government since they do not regulate the insurance industry. Licensing fees and fines all go to the state.

❖OTHER PERSONS: Since the notification of the receipt of a claim has been changed, there is a potential savings for the insurers in the form of postage and handling. Claim notification requirements have been made uniform reducing the number of notices required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The potential savings on postage and handling per insurance company would depend on how quickly they process claims.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed separation of the health and disability insurance lines from other lines of insurance should not present additional costs to the

insurance industry. It is anticipated that the changes in this rule will present cost savings to insurance companies.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Insurance  
Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/18/1999, 11:00 a.m., 3112 State Office Building, Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.****R590-192. Unfair Health Claims Settlement Practices Rule.****R590-192-1. 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. Further authority to provide for timely settlement of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the insurance department is provided by Section 31A-2-204.

**R590-192-2. Purpose.**

This rule sets forth minimum standards for the investigation and disposition of health claims arising under policies or certificates issued to residents of the State of Utah. These standards include fair and rapid settlement of claims, protection of claimants under insurance policies from unfair claims settlement practices, and the promotion of the professional competence of those engaged in processing of claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim practices. This rule is regulatory in nature and is not intended to create a private right of action.

**R590-192-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

(1) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.

(2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "Claimant" means an insured, the beneficiary or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(5) "Days" means calendar days.

(6) "Documentation" includes all communication records, transactions, notes, work papers, claim forms, bills and explanation of benefits forms relative to the claim, the claim investigation, the claim adjustment and the claim settlement.

(7) "General business practice" means a pattern of conduct.

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(9) "Notice of Loss" means that notice which is in accordance with policy provisions and insurer practices. Such notice shall include any notification, whether in writing or other means, which reasonably apprizes the insurer of the existence of or facts relating to a claim.

#### **R590-192-4. File and Record Documentation.**

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide:

(a) the claim number;

(b) copy of the policy;

(c) date of loss;

(d) date of settlement of the claim; and

(e) type of settlement: paid, and amount paid, settled without payment or denied.

(2) Adequate detailed documentation shall be contained in each claim file in order to reconstruct the adjustment and settlement of each claim.

(3) Each document within the claim file shall be noted as to date received, date processed and/or date mailed.

#### **R590-192-5. Misrepresentation of Policy Provisions: Prohibited Acts Applicable to All Insurers.**

(1) An insurer and the insurer's representative shall fully disclose to a claimant the benefits, and/or limitations and exclusions of an insurance policy or insurance contract which relates to the diagnoses and services relating to the particular claim being presented.

(2) An insurer and the insurer's representative must disclose to a claimant, provisions of an insurance policy or insurance contract when receiving inquiries regarding coverage.

#### **R590-192-6. Notice of Loss.**

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise by means of policy provisions or a separate written notice mailed or delivered to the insured.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by any authorized representative of the insurer.

(4) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

#### **R590-192-7. Minimum Standards for Claim Handling Processes and Communications.**

(1) Every insurer, upon receiving notice of loss shall, within 15 days of the notification, provide necessary claim forms, instructions, and reasonable assistance so the claimant can properly comply with company requirements for filing a claim.

(2) Upon receipt of any written notice of loss documentation required, within 30 days the insurer shall:

(a) provide written acknowledgment of the receipt of the notice of loss;

(b) request any necessary additional information from the claimant;

(c) commence any necessary investigation of the claim, including requesting additional information from other parties having documentation or information relating to the claim.

(3) The insurer shall complete investigation of a claim within 30 days after receipt of completed notice of loss documentation from the claimant, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 30 days of its receipt of notice of loss. If the investigation cannot be completed within 30 days the insurer shall send to the claimant a written explanation for the delay and shall continue to so communicate at least every 30 days until the claim is either paid or denied.

(4) Within 15 days of completion of the investigation, the insurer will accomplish either:

(a) written denial of the claim with a complete explanation to the claimant; or

(b) mailing of the claim settlement with a written explanation of the benefits.

(5) If recalculation/re-visitation of a claim becomes necessary, subsequent to either denial or settlement, the insurer shall comply with the initial time requirement as outlined in Section 3 of this section.

(6) If negotiations are continuing for settlement of a claim with a claimant, notice of expiration of statute of limitations or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

(7) Notice of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

(8) Closing a claim file without settlement is considered a denial and must be so communicated in writing, to the claimant and according to the provisions of the policy.

(9) Every insurer, upon receipt of an inquiry from the Insurance Department regarding a claim, shall furnish the Department with a substantive response to the inquiry within the appropriate number of days indicated by such inquiry.

(10) The insurer shall acknowledge and substantively respond within 15 days to any written communication from the claimant relating to a pending claim.

**R590-192-8. Unfair Methods, Deceptive Acts and Practices Defined.**

The commissioner, pursuant to Subsection 31A-26-303(4), hereby find the following acts or the failure to perform required acts to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims.

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such alleged misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying or reducing the payment of claims.

(4) failing to deliver a copy of standards for prompt investigation of claims to the Insurance Department when requested to do so;

(5) refusing to settle claims without conducting a reasonable and complete investigation;

(6) denying a claim or making a claim payment to the insured or beneficiary not accompanied by a statement or explanation of benefits setting forth the exclusion or benefit under which the denial or payment is being made and how the payment amount was calculated;

(7) failing to make payment of a claim following notice of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(8) advising a claimant not to obtain the services of an attorney or other advocate or suggesting that the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(9) misleading a claimant as to the applicable statute of limitations;

(10) deducting from a loss or claims payment made under one policy those premiums owed by the insured on another policy, unless the insured consents to such arrangement;

(11) failing to settle a claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(12) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(13) refusing to provide a written reason for the denial of a claim upon demand of the claimant;

(14) refusing to pay reasonably incurred expenses to the claimant when such expenses resulted from a delay, as prohibited by this rule, in the claim settlement; and

(15) Failing to pay interest at the legal rate, as provided in Title 15, upon amounts that are overdue under this rule.

**R590-192-9. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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 law**  
**1999**

**31A-1-301**  
**31A-2-201**  
**31A-2-204**  
**31A-2-308**  
**31A-21-312**  
**31A-26-301**  
**31A-26-303**



Lieutenant Governor, Administration  
**R622-2**  
Use of the Great Seal of the State of  
Utah

**NOTICE OF PROPOSED RULE**

(New)

DAR FILE NO.: 21963

FILED: 04/14/1999, 12:05

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To manage the use and application of the Great Seal of the State, and define criteria for its authorized application.

SUMMARY OF THE RULE OR CHANGE: The rule defines primary functions; custody and use; general permitted uses; prohibited uses; application process, revocation criteria and enforcement methodology for purposes of regulating applications of the Great Seal.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-1a-7, 67-1a-8, and 76-6-501; and Subsection 67-1a-2(4)

## ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Costs are limited to time for development and dissemination of the rule, and are considered as absorbable within state budgets.

❖LOCAL GOVERNMENTS: Application costs will be \$5 per application from each non-state agency or entity.

❖OTHER PERSONS: Application costs of \$5 per request are set, with numbers of requests expected to range from none, upwards to possibly 20-30 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Application costs will be \$5 per application from each non-governmental entity or private person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business costs will be \$5 per application, seeking permission to use the great seal--Olene S. Walker, Lt. Governor.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Lieutenant Governor  
Administration  
210 State Capitol Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim Jones at the above address, by phone at (801) 538-1520, by FAX at (801) 538-1528 or (801) 538-1557, or by Internet E-mail at kajones@gov.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/04/1999

AUTHORIZED BY: Olene S. Walker, Lieutenant Governor

**R622. Lieutenant Governor, Administration.****R622-2. Use of the Great Seal of the State of Utah.****R622-2-1. Purpose.**

(A) The Great Seal of the State of Utah is a symbol of the sovereignty of this state, and its use denotes authenticity of official state government functions and authority. The Great Seal is a single mounted engraved plate, comprising form and content as described in Section Section 67-1a-8, Utah Code. The purpose of this rule is to define how the state will:

(1) manage the use and application of the Great Seal (the seal); and

(2) define criteria for its authorized application.

**R622-2-2. Primary Function of the Seal.**

(A) Since its conception, the seal has been employed for specific governmental applications within the state's Executive, Legislative and Judicial Branches. The seal will be administered consistent with state law and policy, and its principal application shall be to authenticate or attest to:

(1) official documents which are authorized and/or required by statute; and

(2) other state documents having historic, civic, commemorative or educational value or import.

(B) The seal's impression on a legal document shall require the Lieutenant Governor's signature to appear on the same page as, and in proximity thereto.

**R622-2-3. Custody and Use.**

Pursuant to Section Section 67-1a-2(4) of the Utah Code: "The lieutenant governor shall keep custody of the Great Seal of the state of Utah; to keep a register of, and attest, the official acts of the governor; and to affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required. In addition, the Lieutenant Governor of Utah shall be the only agent authorized to affix the seal to any document for the purpose of attesting, certifying, or otherwise formalizing a document. No facsimile or reproduction of the Great Seal may be manufactured, used, displayed, or otherwise employed by anyone without the written approval of the Lieutenant Governor."

**R622-4. General Permitted Uses of the Seal.**

(A) The seal shall be permitted for use without the written authorization of the Lieutenant Governor, in the following circumstances:

(1) printings of replicas of the seal on official state letterhead, business cards, and stationery for agencies, entities, or officers of the state;

(2) application or display of replicas of the seal by state agencies and state political sub-divisions which delineate official state purposes, and by state elected officials in connection with their official state business. Officials of state entities/agencies shall describe and submit a list of intended uses with the lieutenant governor's office to assure uniformity and continuity of use;

(3) exhibition of permitted reproductions of the seal on state flags, and

(4) for educational and academic uses by schools, colleges and universities to convey information about official state functions. Such uses shall not attempt to endorse, authenticate, recognize or promote persons or roles, or be part of administrative or promotional functions. Each such use shall also be itemized, described and submitted to the lieutenant governor's office.

**R622-2-5. Prohibited Usage.**

(A) The seal, or replica, shall not be committed for general use, including:

(1) for personal financial gain;

(2) for, or in connection with, any advertising or promotion of any product, business, organization, service, or article whether offered for sale, for profit or without charge;

(3) in a political campaign, or in ways that may legitimize or assist to defeat another candidate for elective office; or

(4) to function as, or be construed to function in any way as an endorsement of any business, organization, product, service or article.

(B) No symbol shall be used that imitates or appears similar to the seal in a way that intends to deceive, or is displayed in a manner that conveys improper use of the official Great Seal itself.

(C) When the seal is used, no mark, insignia, letter, word, figure, design, picture, or drawing of any nature may be placed upon the seal, or any part of it.

(D) A state agency, or an elected official, other than the lieutenant governor, shall not have authority to permit an individual or entity associated with a state agency or state elected official, to use the seal or replica for a commercial purpose whereby items will be distributed for sale, even though such purpose may include the providing of goods or services to the state.

(E) The seal shall not be displayed in a manner which lessens or detracts from its dignity or impact.

**R622-2-6. Application For Use.**

(A) Persons or entities seeking permission to use the seal or replica, will complete and file a legible application with the Lt. Governor, on a form provided by that office, which shall include:

(1) a specific description of the intended usage involving the Great Seal of the State of Utah, or replica of the seal,

(2) the payment of a fee in the amount of \$ 5.00, (non-refundable) and

(3) a precise description and specification of the actual product or item to bear the seal, or replica, in the form of an architectural drawing, engineering draft-to-scale, brochure, or lucid photograph or computer-graphic. The application, and supporting documents shall become the property of the lieutenant governor's office.

(B) Upon approval of a complete application, the license-holder shall be issued a certificate bearing an identification number, by the lieutenant governor, which shall be kept by the user on file for four years following use of the seal. State agencies and entities which use the state seal or replica for official state functions have no application or fee requirement.

(C) An application may be denied for (1) failure to comply with relevant statutes or this rule, (2) failure to include the required fee, or (3) if the intended use is found to be detrimental to the image of the state and not in its best interest.

**R622-2-7. Revocation of Approved Applications.**

The lieutenant governor may revoke any prior approved usage if it is determined that the seal is being used improperly, if the actual use differs from the intended use as described on the application, or if false or inaccurate information was used to gain approval.

**R622-2-8. Enforcement.**

(A) Pursuant to Section Section 67-1a-7, Utah Code, except as otherwise provided by law, only the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the seal to a document in pursuance of law. If any person illegally uses the seal, or such seal when defaced, the state may refer such criminal violations to an appropriate prosecuting authority.

(B) Under the provisions of Section Section 76-6-501, Utah Code, the state may seek redress against a person, or persons, who impermissibly replicate the seal as a forgery. A person or entity employing the seal, or a replica, with the intent to defraud or imply that the presence of the seal or replica appeared by permission of the state, or whose presentation of the seal denigrates it's ability to authenticate by proper state authority, may be referred to an appropriate prosecuting authority.

**KEY: great seal, lt. governor, state flag  
1999**

**67-1a-7  
67-1a-8  
67-1a-2(4)  
76-6-501**



**Regents (Board of), University of Utah,  
Museum of Natural History (Utah)**

**R807-1**

**Curation of Collections From State  
Lands**

**NOTICE OF PROPOSED RULE**

(New)

DAR FILE NO.: 21966

FILED: 04/14/1999, 18:53

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To respond to legislation (S.B. 128 (1992) and H.B. 250 (1994)) requiring the Museum of Natural History to set forth a process for selecting curation facilities and repositories for archaeological and critical paleontological resources.

(DAR Note: S.B. 128 is found at 1992 Utah Laws 286 and was effective March 17, 1992, and H.B. 250 is found at 1994 Utah Laws 294 and was effective July 1, 1994.)

SUMMARY OF THE RULE OR CHANGE: This rule ensures the adequate curation of all collections from lands owned or controlled by the state or its subdivisions through the selection and review of curation facilities and repositories.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53B-17-603(2), 53B-17-603(4)(a), 9-8-305(1)(c), and 63-73-12(1)(6)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This rule clarifies a process that has been in place for several years since enactment of legislation, and as such, it is unlikely that the rule will now impact costs or savings to the state budget.

❖LOCAL GOVERNMENTS: This rule clarifies a process that has been in place for several years since enactment of legislation, and as such, it is unlikely that the rule will now impact costs or savings to the local government. Nonetheless, the rule requires certain standards for curation which may require some local museums to update or improve their curation facilities if they wish to curate collections from state lands.

❖OTHER PERSONS: This rule clarifies a process that has been in place for several years since enactment of legislation, and as such, it is unlikely that the rule will now impact costs or savings to other persons. Nonetheless, the rule requires certain standards for curation which may require some local

museums to update or improve their curation facilities if they wish to curate collections from state lands.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule clarifies a process that has been in place for several years since enactment of legislation, and as such, it is unlikely that the rule will now impact costs or savings to other persons. Nonetheless, the rule requires certain standards for curation which may require some local museums to update or improve their curation facilities if they wish to curate collections from state lands.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--this rule does not apply to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Regents (Board of)  
University of Utah,  
Museum of Natural History (Utah)  
Room 302, George Thomas Building  
1390 East Presidents Circle  
University of Utah  
Salt Lake City, UT 84112-0050, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ann Hanniball at the above address, by phone at (801) 585-6928, by FAX at (801) 585-3684, or by Internet E-mail at hanniball@geode.umnh.utah.edu.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Ann Hanniball, Assistant Director

**R807. Regents (Board of), University of Utah, Museum of Natural History (Utah).**

**R807-1. Curation of Collections from State Lands.**

**R807-1-1. Purpose.**

(1) This rule ensures the adequate curation of all collections from lands owned or controlled by the state and its subdivisions through the selection and review of curation facilities and repositories.

**R807-1-2. Authority.**

(1) This rule is required by Title 53B, Chapter 17, and is enacted under the authority of Subsections 53B-17-603(2) and 53B-17-603(4)(a).

**R807-1-3. Definitions.**

(1) The terms used in this rule are defined in Sections 9-8-302, 65A-1-1, 53B-17-603, and 63-73-1.

(a) "Collection" means a specimen and the associated records documenting the specimen and its recovery.

(b) "Critical paleontological resources" means vertebrate fossils and other exceptional fossils that are designated state paleontological landmarks as provided for in Section 63-73-16.

(c) "Curation facility" means:

(i) the museum;

(ii) an accredited facility meeting federal curation standards;

or:

(iii) an appropriate state park.

(d) "Museum" means the Utah Museum of Natural History.

(e) "Repository" means:

(i) a facility designated by the museum through memoranda of agreement; or

(ii) a place of reburial.

(f) "Specimen" means:

(i) all man-made artifacts and remains of an archaeological or anthropological nature, found on or below the surface of the earth, excluding structural remains; and

(ii) remains of a critical paleontological nature found on or below the surface of the earth.

(2) In addition:

(a) "Appropriate permitting agency" means the Division of State History, the Geologic Survey, or the School and Institutional Trust Lands Administration as set forth in Sections 9-8-305 and 63-73-12,13.

(b) "Arbitration board" means ultimate arbitration authority as set forth in Section 53B-17-12-13 603(4)(a)(vii).

(c) "Committee" means the curation advisory committee;

(d) "State lands" means lands owned or controlled by the state and its subdivisions, and includes lands

administered by the School and Institutional Trust Lands Administration.

**R807-1-4. Clarification of 53B-17-603.**

(1) For the purposes of Section 53B-17-603 and this rule:

(a) "Accredited" means current accreditation by the American Association of Museums or other nationally recognized accrediting institutions or agencies;

(b) "Appropriate state park" means a state park designated by the Division of Parks and Recreation as meeting and being in compliance with federal curation standards;

(c) "Federal curation policy" means: generally understood principles of federal and professional curation policy, and for archaeological collections, includes but is not limited to those as set forth in 36 CFR Part 79, 1996 ed., as amended and those federal rules implementing the Native American Grave Protection and Reburial Act (43 CFR Part 10, 1996 ed.);

(d) "Meeting federal curation standards" means that a facility has been designated by a federal agency as a repository and is in compliance with Federal curation policy.

**R807-1-5. Curation Advisory Committee.**

(1) The Museum shall establish a curation advisory committee and shall select the members of the Committee.

(2) The Committee shall be composed of at least eight members and shall include a representative from the Division of Parks and Recreation, the Division of Sovereign Lands and Forestry, the School and Institutional Trust Lands Administration, Division of Indian Affairs, Division of State History, Utah Geologic

Survey, curation facilities, and may include representatives with interests in one or more of the following areas: education, research, cultural resource management, or curation.

(3) The Committee shall serve in an advisory capacity to the Museum.

(4) The Committee's responsibilities shall include advising the Museum on the following:

(a) the development and annual review of procedures relating to the designation of repositories;

(b) the designation of certain repositories or curation facilities, taking into consideration those factors listed in Section 53B-17-603(4)(a); and

(c) other means by which the Museum can ensure the adequate curation of all collections from state lands.

(5) The Committee shall meet with the Museum at least semiannually, as called by the Director of the Museum.

#### **R807-1-6. Proof of Consultation.**

(1) The Museum may enter into a memorandum of agreement with permitting agencies that establishes a process for providing persons applying for either a survey or an excavation permit with proof of consultation as required by Section 9-8-305(1)(c)(vii) and Section 63-73-12(1)(6)(vi). That process will include:

(a) The Museum maintaining a list of curation facilities and repositories in Utah. The list shall include:

(i) their geographic location;

(ii) the types of collections they curate or desire to curate; and

(iii) for repositories, the types of collections they can adequately curate.

(b) A procedure for the permit applicant receiving a copy of the list.

(c) A procedure for the Museum receiving notification of the selected curation facility or repository and a copy of the permit application.

(d) A procedure whereby critical vertebrate paleontological resources may be curated by the permittee when the permittee is a curation facility.

(2) Collections obtained under an excavation permit shall be deposited by the permittee at the designated repository or curation facility no later than six months after the permittee provides the appropriate permitting agency with reports as required by law.

(3) Collections obtained under a survey permit shall be deposited at the designated repository or curation facility within one calendar year of completion of field work.

#### **R807-1-7. Curation Standards.**

(1) In order to be designated as an appropriate curation facility or repository for collections, a facility must provide evidence of its ability to continually provide adequate curation appropriate to the nature and content of the collection.

(2) Adequate curation is presumed for all curation facilities.

(3) Adequate curation for repositories means at a minimum:

(a) possessing and maintaining complete and accurate collection records;

(b) possessing and maintaining requisite facilities which have equipment and space in the physical plant dedicated solely to the proper storage, study, and conservation of collections;

(c) possessing and maintaining the ability to keep collections under physically secure conditions within storage, laboratory, study, and exhibition areas;

(d) requiring staff and any consultants who are responsible for managing and preserving collections to be trained in the curation of collections;

(e) appropriately handling, storing, cleaning, conserving, and exhibiting collections to ensure the physical integrity of collections;

(f) storing records of collections, including site forms, field notes, artifact inventory lists, computer disks and tapes, catalog forms, photographs, and a copy of the final report in a manner that will protect them from theft and fire;

(g) conducting regular inspections and inventories of collections; and

(h) developing and implementing procedures regarding the accessioning, loan, exhibition, and deaccessioning of specimens.

#### **R807-1-8. Designation of Repositories.**

(1) Any facility, other than a place of reburial, seeking to be designated as a repository shall submit to the Museum:

(a) a completed Facility Assessment Form, a copy of which may be obtained from the Museum; and

(b) any other information relating to the facility's ability to provide adequate curation appropriate to the nature and content of collections requested by the Museum.

(2) If the Museum determines that a facility is able to provide adequate curation, the Museum will enter into a memorandum of agreement that will designate that facility as a repository and ensure continued adequate curation at that facility. The memoranda of agreement shall include the following:

(a) reporting provisions;

(b) provisions for periodic review and monitoring; and

(c) conditions triggering the revocation of collections from state lands.

(3) Any facility denied repository status may appeal the Museum's decision within 30 days of the denial of status pursuant to the procedures set forth in R807-1-13 below.

#### **R807-1-9. Selection of a Repository or Curation Facility.**

(1) A repository or curation facility seeking designation as a repository or curation facility shall notify the Museum of the nature of collections it wishes to curate by filing a request with the Museum. A request for designation shall include a discussion of the following as appropriate:

(a) identification of any specific site or project of interest to the repository or curation facility;

(b) repository or curation facility programs related to its proposed scientific and educational use of the requested collections; and

(c) proximity of the repository or curation facility to the point of origin of the requested collections.

(2) The Museum shall select a repository or curation facility for collections to be obtained from state lands under a survey permit, considering those factors listed in Section 53B-17-603(4)(a).

(3) The Museum in consultation with the Committee shall select a repository or curation facility for collections to be obtained from state lands under an excavation permit, taking into consideration those factors listed in Section 53B-17-603(4)(a).

(4) The Museum in consultation with the Committee shall designate a second repository or curation facility to curate collections if the repository or curation facility originally selected fails to provide adequate curation appropriate to the nature and content of the collection.

(5) Any curation facility or repository may appeal the selection of a repository or curation facility within 30 days after receiving notice of that selection through the procedures set forth in R805-1-13 below.

**R807-1-10. Obligations of Repositories or Curation Facilities.**

(1) Repositories or curation facilities shall immediately notify the Museum of any loss of accreditation, any changes resulting in a failure to meet federal curation standards, or any breach of a memorandum of agreement entered into with the Museum.

(2) If a repository or curation facility loses its accreditation, fails to meet federal curation standards, or breaches its memorandum of agreement, the Museum may require transfer of collections to another repository or curation facility.

(3) The Museum shall periodically review repositories to assure they are providing adequate curation appropriate to the nature and content of the collection. The Museum's reviews may occur through an on-site visit or submission of written reports from the repository. The Museum shall give the repository 30 days notice of a proposed review.

(4) Curation facilities with collections from state lands shall provide the Museum with copies of accreditation reports from the American Association of Museums or other nationally recognized accrediting institutions or agencies.

(5) Repositories or curation facilities shall provide an inventory of collections received from state lands to the Museum within 90 days of receipt of the collection.

(6) Repositories or curation facilities shall notify the Museum 30 days prior to undertaking any destructive analysis or exchange to allow the Museum opportunity to review and comment.

(7) Other than appropriate exchanges of collections and destructive analysis, no other form of permanent removal of collections shall take place.

(8) Repositories or curation facilities shall notify the Museum within 30 days of the accidental or any other loss or destruction of any specimen.

(9) Repositories or curation facilities shall not take any actions that would adversely affect recognition of the following:

(a) Collections obtained in exchange for collections found on school and institutional trust lands are owned by the respective trust and are subject to these rules;

(b) Collections recovered from school and institutional trust lands are owned by the respective trust;

(c) Any monies obtained by a curation facility or repository from sales of reproductions derived from collections found on state lands shall be given to the respective trust, except that the curation facility or repository may retain monies sufficient to recover the direct costs of preparation for sale and a reasonable fee for handling the sale. It is recognized that a curation facility or repository may contract with a third party to prepare and produce reproductions.

(d) Collections recovered from school and institutional trust lands shall be available for exhibition as the beneficiaries of the respective trust may request, subject to Museum's curation responsibilities and the repository or curation facility's budgetary and exhibit priorities.

**R807-1-11. Reporting.**

(1) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Trust Lands Administration an inventory of collections received from their respective lands and placed in repositories or curation facilities.

(2) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Lands Administration an inventory of specimens lost, destroyed, or exchanged from their collections.

(3) The Museum shall annually submit to the Division of State History a list of collections received and places in repositories or curation facilities.

**R807-1-12. Designation of Adjudicative Proceedings as Informal.**

(1) All appeals shall be conducted informally.

**R807-1-13. Procedures of Informal Adjudicative Proceedings.**

(1) Any facility requesting an appeal of a Museum designation or selection shall include the following information in its request:

(a) the names and addresses of all persons known to have a direct interest in the requested Museum action and to whom a copy of the request for Museum action is being sent;

(b) the Museum's file number or other reference number, if known;

(c) the date that the request for Museum action was mailed;

(d) a statement of the legal authority and jurisdiction under which the Museum action is requested;

(e) a statement of the relief or action sought from the Museum; and

(f) a statement of the facts and reasons forming the basis for relief or Museum action.

(2) The facility requesting an appeal shall send a copy of the request by mail to each person known to have a direct interest in the requested agency action.

(3) The director of the Museum shall promptly review a request for relief and shall notify the facility in writing of:

(a) the decision;

(b) the reasons for the decision; and

(c) a notice of the right to review by the arbitration board within 30 days.

(4) Copies of the director's notification shall be sent to the facility making the request and to those parties who have previously expressed a direct interest in the request.

(5) The facility may request a review within 30 days of the director's final decision by submitting a written request to the Museum. The Museum director shall then request that the arbitration board, as set forth in 53B-17-603 (4)(a)(vii), shall meet.

(6) The arbitration board shall respond to the request within 30 days of notification.

**KEY: curation, archeological resources, paleontological resources**  
**1999**

**53B-17-603(2)**  
**53B-17-603(4)(a)**  
**9-8-305(1)(c)**  
**63-73-12(1)(6)**

◆ ————— ◆  
**Transportation, Administration**  
**R907-64**

**Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities**

**NOTICE OF PROPOSED RULE**

(New)  
 DAR FILE NO.: 21970  
 FILED: 04/15/1999, 13:27  
 RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to implement a program for limited longitudinal access and wireless access to interstate highway rights-of-way for purposes of installing, operating, and maintaining wireline and wireless telecommunications facilities in the rights-of-way. This rule seeks to preserve, to the greatest degree possible, the safety and convenience of the traveling public on Interstate highways in Utah. It also permits the use of highway rights-of-way for telecommunications facilities that support the Federal and State law goals of encouraging competition in telecommunications and permitting the deployment of advanced telecommunications technologies. The department shall, through designated personnel, and pursuant to written guidelines, control such installations, and maintenance of such facilities.

**SUMMARY OF THE RULE OR CHANGE:** Newly enacted Section 72-7-108 grants authority to the Department of Transportation to permit longitudinal access on highway rights-of-way within the interstate system. This rule sets out the conditions under which telecommunications facility providers may seek and be granted access to interstate highway rights-of-way within the state.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-7-108  
**FEDERAL REQUIREMENT FOR THIS RULE:** Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 70

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** The Department of Transportation will incur some costs each time access is granted to one or more telecommunications facility providers. These costs will be dependent on variables such as distance and type of facilities installed, and will be incurred as the department reviews construction plans, inspects facilities as they are constructed, and performs other related technical reviews. However, the department plans to recover these costs through the compensation received for permitting telecommunications facilities within the interstate highway rights-of-way, as granted by Section 72-7-108. As a minimum, the department will not issue permits to telecommunications facility providers unless the department is reimbursed for all its expenses. Until a telecommunications facility provider proposes a specific use for a segment(s) of the interstate highway rights-of-way, no estimate of costs can be provided. The amount of any type of compensation received by the department is expected to cover any costs incurred by the department.

❖**LOCAL GOVERNMENTS:** None--local governments are unaffected by this rule.

❖**OTHER PERSONS:** Telecommunications facility providers who seek and are granted access to a segment(s) or all of the interstate highway rights-of-way must provide compensation to the Department of Transportation (State). The type and amount of this compensation will not be set until a schedule of rates is established, as provided by Section 72-7-108. Therefore, the actual cost to any telecommunications facility provider is not yet known. At a minimum, all telecommunications facility providers will reimburse the department for expenses the department incurs during the planning and construction of any approved telecommunication facility installed on interstate highway rights-of-way. The actual cost to any telecommunications facility provider is unknown at this time.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule does not require action on the part of other parties, and therefore, there are no mandatory compliance costs. If one or more telecommunications facility providers choose to seek and are granted access to interstate highway rights-of-way, then some amount of compliance costs in the form of compensation to the department (State) will be incurred. The level and type of compensation charged will be set by a rate schedule established by the department pursuant to the provisions of Section 72-7-108. Therefore no exact compliance costs can be stated at this time.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule permits the implementation of key provisions of Section 72-7-108, supports the intent of the Federal and State Telecommunications Acts, and creates opportunities for telecommunications facility providers to expand their networks within Utah. The rule imposes no cost to telecommunications facility providers except when they voluntarily seek access to interstate highway rights-of-way.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Transportation  
Administration  
4501 South 2700 West  
Box 141265  
Salt Lake City, UT 84114-1265, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Neal F. Christensen at the above address, by phone at (801) 965-4032, by FAX at (801) 965-4338, or by Internet E-mail at nchriste@dot.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Neal F. Christensen, Director

## **R907. Transportation, Administration.**

### **R907-64. Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities.**

#### **R907-64-1. Purpose.**

The purpose of this rule is to implement a program for limited longitudinal access and wireless access to interstate highway rights-of-way to provide for the installation, operation and maintenance of wireline and wireless telecommunications facilities in the rights-of-way. This rule seeks to preserve, to the greatest degree possible, the safety and convenience of the traveling public on interstate highways in Utah. Compatible with that, it also permits the use of interstate highway rights-of-way for telecommunications facilities that support Federal and State laws that encourage competition in telecommunications services and the deployment of advanced telecommunications technologies. The department shall, through designated personnel, control such installations and maintenance of such facilities.

#### **R907-64-2. Authority.**

Section 72-7-108(2)(a) states that, except as provided in Subsection (4), the department may allow a Telecommunication Facility Provider longitudinal access to the right-of-way of a highway on the Interstate System for the installation, operation, and maintenance of Telecommunication Facility.

#### **R907-64-3. Definitions.**

(1) "Department" means the Department of Transportation.

(2) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The width of the clear zone is dependent upon the traffic volumes and speeds and on the roadside geometry.

(3) "Interstate System" means any existing or future highway included as a part of the national system on interstate and defense highways, as provided in the Federal Aid Highway Act of 1956 and any supplemental or amendatory acts, and which primarily consist of Interstate Highways I-15, I-215, I-70, I-80, and I-84.

(4) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the Interstate System that extends generally parallel to the right-of-way for a total of 30 or more linear meters.

(5) "Permit" means a document issued by the Department of Transportation to a Telecommunications Facility Provider which specifies the requirements and conditions under which longitudinal or wireless access to highway right-of-way of the Interstate System shall be allowed.

(6) "Right-of-way" means real property or an interest in real property, usually in a strip, acquired for or devoted to a highway.

(7) "Telecommunication Facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment or other equipment, system and device used to transmit, receive, produce or distribute via wireless, wireline, electronic, or optical signal for communication purposes.

(8) "Telecommunications Facility Provider" means any owner or operator of a Telecommunication Facility.

(9) "Utility" includes telephone, wireline and wireless, gas, electricity, cable television, water, and sewer transmission lines, drainage and irrigation systems, and other similar utilities located in, on, along, across, over, through, or under any highway of the State Highway System.

(10) "Wireless access" means access to and use of any part of a right-of-way or rights-of-way on, any highway of the Interstate System for the purpose of constructing, installing, maintaining, using and operating Telecommunication Facilities for wireless telecommunications.

#### **R907-64-4. Access Policy.**

(1) Utility accommodations on the Interstate System shall comply with the federal utilities accommodations policies set forth in Title 23, CFR, Part 645. Title 23 CFR section 645.205(a) reads in part: "It is in the public interest for utility facilities to be accommodated on the right-of-way when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations."

(2) Utility facilities installations on federal aid and non federal aid highway rights-of-way, shall be accommodated by the department to the extent that it will not compromise the safety or integrity of the highway and without interference with the normal operation and maintenance activities as required for state highways in accordance with Title 72 of the Utah Code.

(3) The department also acknowledges that recent Federal and State Legislation - primarily the Telecommunications Act of 1996, P. L. 104 - 104, 110 Stat. 70 (Feb. 8, 1996) and Utah Code section 54-8b-1 - encourage competition in the provision of telecommunication services, and the development and deployment of advanced telecommunication technologies, infrastructure, and networks. These legislative initiatives in turn have increased demand for rights-of-way - including highway rights-of-way - for the installation of Telecommunication Facilities necessary to support increased competition and deployment of an advanced telecommunication infrastructure.

(4) The department also recognizes that under controlled circumstances longitudinal access and wireless access for Telecommunication Facilities can be provided without compromising highway integrity, safety, normal highway operation or maintenance activities, while contributing to the deployment and efficient operation of intelligent transportation systems.

(5) Therefore, effective on or after June 2, 1999, the department may allow longitudinal access and wireless access on highways of the Interstate System for placement, construction, installation, maintenance, repair, use, operation, replacement and removal of Telecommunication Facilities, as authorized by Utah Code Section 72-7-108 and subject to compliance with this rule. This rule applies only to longitudinal access and wireless access for Telecommunication Facilities on rights-of-way within the Interstate System and does not alter the existing policy concerning other utilities on interstate rights-of-way, or for accommodating Utilities on other state highways within Utah.

#### **R907-64-5. Limitations and Conditions.**

(1) Longitudinal and wireless access of Telecommunication Facilities shall be permitted only as approved by the Executive Director or designee, to protect the safety and integrity of the Interstate System and to prevent interference with normal operation and maintenance activities as required for the Interstate System in accordance with Utah Code Annotated 1953, Title 72.

(2) In the interest of safety and preservation of the highway facility and pavement structure, the placement, installation, maintenance, repair, use, operation, replacement and removal of Telecommunications Facilities with longitudinal access or wireless access shall be allowed only when in compliance with Rule R930-6, as described in the department's "MANUAL FOR ACCOMMODATION OF UTILITIES AND THE CONTROL AND PROTECTION OF STATE HIGHWAY RIGHTS OF WAY" and with 23 CFR, Part 645, Subpart B, "Accommodation of Utilities." The Executive Director or designee, may grant variances from the provisions of the Manual, and/or may impose special terms and conditions, in the permit or the parties' negotiated agreement, concerning placement, construction, installation, maintenance, repair, replacement and removal of Telecommunication Facilities with longitudinal access or wireless access. The Telecommunications Facility Provider shall comply with all special terms and conditions specified by the department.

(3) Occupancy by longitudinal access or wireless access shall satisfy all the following conditions: the accommodation shall not adversely affect traffic safety, design, construction, operational capacity, maintenance or stability, or interfere with the current use or future expansion, of the Interstate System; the accommodation shall present no additional significant risk of personal injury or property damage if it fails to function properly, is severed or is otherwise damaged, and shall meet the safety requirements of federal and state law, and department procedures and guidelines.

(4) The use of through traffic roadways, lanes and ramps for construction, inspection, testing or maintenance activities shall be avoided except where the Executive Director or designee finds hardship or impracticality and grants a variance. The location of aboveground installations, including huts, pedestals, poles and boxes, within the highway right-of-way shall be as approved by the department.

(5) No longitudinal access or wireless access shall be allowed within the median strip, unless permitted by the Executive Director or designee. The installation shall be placed on a uniform alignment at or adjacent to the right-of-way line and beyond the recovery or clear zone area or as otherwise determined by the department. No Telecommunication Facilities shall be permitted within the clear zone of through-traffic roadways, lanes or ramps unless approved as an exception by the Executive Director or designee.

(6) The department may specify qualifications and insurance requirements for contractors authorized to enter Interstate System rights-of-way to construct, install, inspect, test, maintain or repair Telecommunication Facilities with longitudinal access or wireless access. During each period that the department authorizes longitudinal access or wireless access for construction and installation, the department may require all Telecommunication Facility Providers approved to install Telecommunication Facilities in the same general location on the Interstate System to coordinate their work, to install in a joint trench, and/or to equitably share costs.

(7) The department shall manage and administer access to rights-of-way of the Interstate System in compliance with 47 U. S. C. section 253.

#### **R907-64-6. Compensation.**

(1) The department shall require compensation from a Telecommunication Facility Provider under the provisions of Section 72-7-108 for longitudinal access consistent with the rate schedule adopted by the department through rulemaking.

(2) Until the rate schedule has been formally adopted pursuant to Title 63 Chapter 46a, Utah Administrative Rulemaking Act, all agreements are subject to modification to comply with the rate schedule.

#### **R907-64-7. Permits.**

(1) In accordance with 23 CFR, part 645 subpart B, "Accommodations of Utilities," the Utah Code 72-6-116 "Regulation of Utilities-Relocation of Utilities," and Rule R930-6, which is described in the department's "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights of Way," a Telecommunication Facility Provider shall be required to complete and sign an agreement with the department prior to obtaining a permit for construction or installation. The Telecommunication Facility Provider shall be required to apply to the office of Deputy Director to obtain a permit for longitudinal access or wireless access on rights-of-way in the Interstate System, and to comply with department policies and procedures for the accommodation of utilities on highway rights-of-way.

(2) Each negotiated agreement and permit shall comply with the contracting requirements of such manual and shall authorize longitudinal access or wireless access only for a limited, stated period of time, including all rights or options to extend or renew, as approved by the Deputy Director. The term of such agreements and permits shall be no longer than 15 years. Telecommunication Facility Providers shall be given every reasonable opportunity to renew any and all agreements and permits following the 15 year term, provided that new negotiated agreements can be reached between the department and the Telecommunication Facility Providers.

(3) No permit shall be issued prior to a negotiated agreement having been reached between the department and Telecommunication Facility Providers. Failure of the parties to reach agreement on any matter shall cause longitudinal access to be denied and no permit shall be issued.

**R907-64-8. Limited, Periodic Opportunities for Installation for Longitudinal Access.**

(1) In order to minimize adverse impacts to rights-of-way and related highway facilities and pavement structures within the Interstate System and to reduce risks to the public safety, longitudinal access for constructing and installing Telecommunications Facilities in any particular segment of such rights-of-way shall be limited in frequency to once every three years, except that the Executive Director or his or her designee, in his or her reasonable discretion, may:

(a) permit construction and installation of Telecommunications Facilities with longitudinal access more frequently than once every three years, based on factors such as safety or operational conditions, or

(b) provide for construction and installation of Telecommunications Facilities with longitudinal access less frequently than once every three years, based on factors such as safety or operational conditions, or

(c) suspend periodic opportunities for construction and installation of Telecommunications Facilities with longitudinal access indefinitely.

Each three year period shall begin on the first date of publication or release of an advertisement or notice of the opportunity for constructing and installing Telecommunications Facilities with longitudinal access to the Interstate System as described below in Subsection (3).

(2) When exercising the discretion to permit construction and installation of Telecommunications Facilities with longitudinal access to the Interstate System more frequently or less frequently than once every three years, as provided above in Subsection (1), the Executive Director or his or her designee shall consider all factors relevant to the department's policy with respect to utility accommodations as expressed in this rule, including the safe, effective, efficient use of highways in the Interstate System by the traveling public, impacts on the Interstate System's operational and technical capacity, prudent economic management of the Interstate System, demand for the construction and installation of Telecommunications Facilities, and the availability of unused capacity in then-existing Telecommunications Facilities within or outside Interstate System rights-of-way. The department may perform capacity surveys of the Interstate System to assure that longitudinal access is feasible prior to opening any segment of the Interstate System to longitudinal access for new or additional Telecommunication Facilities.

(3) The department shall advertise the availability of opportunities for constructing and installing Telecommunications Facilities in Interstate System highway rights-of-way whether for longitudinal access or wireless access, by one or more of the following means; provided, however, that Telecommunication Facility Providers who have been granted a certificate of convenience and necessity by the Public Service Commission of Utah shall be given actual notice by mail:

(a) Publication of the opportunity for not less than five consecutive days in a newspaper of national circulation;

(b) Publication of the opportunity for not less than five consecutive days in a newspaper of statewide circulation;

(c) Publication of notices of the opportunity in the calendar or other regular publications of the department and/or those of other state agencies or departments; or

(d) Press or news releases from the department to newspapers, magazines, periodicals, or telecommunications industry publications.

(4) Advertisements and notices of the availability of opportunities for constructing and installing Telecommunications Facilities in Interstate System highway rights-of-way whether for longitudinal access or wireless access shall contain all of the following:

(a) A description of the segment or segments of the Interstate System for which longitudinal access for the installation and construction of Telecommunications Facilities are proposed;

(b) A deadline, that is not less than 30 days from the first date of publication or release of an advertisement or notice of the opportunity as described above in Subsection (3), for the filing of Statements of Interest with the office of the Deputy Director by Telecommunications Facility Providers regarding their interest in installing and constructing Telecommunications Facilities in the specified segments of the Interstate System; and

(c) The required contents of the Statement of Interest to be filed in response to the advertisement or notice of the opportunity, which shall include the identity of the interested party, the financial and technical qualifications of the interested party, and any other information specified by the department in the advertisement or notice.

(5) The department may enter into negotiations with one or more of the interested parties filing Statements of Interest toward the execution of an agreement or agreements and permits required under Section R907-64-7 above. After executing an agreement and permit, each telecommunications facility provider shall file them with the office of the Deputy Director. The department will compile the Statements of Interest, agreements and permits and will determine a date best suitable and with minimum impact to the traveling public to permit the construction and installation.

**R907-64-9. Removal and Relocation.**

Pursuant to Section 72-7-108, the department may require the removal and/or relocation of Telecommunication Facilities located on the Interstate System when highway changes are required to provide for the free and safe flow of traffic or upon expiration or breach of the permit or other agreements at the Telecommunication Facility Provider's expense.

**KEY: right-of-way, interstate highway system**  
**1999**

**72-1-201**  
**72-6-116**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends June 1, 1999. At its option, the agency may hold public hearings.

From the end of the waiting period through August 29, 1999, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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**The Changes in Proposed Rules Begin on the Following Page.**

Environmental Quality, Air Quality
R307-343
Davis and Salt Lake Counties and
Ozone Nonattainment Areas:
Emissions Standards for Wood
Furniture Manufacturing Operations

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 21727
FILED: 04/12/1999, 14:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on public comments, changes are being proposed and the implementation dates are postponed.

SUMMARY OF THE RULE OR CHANGE: In Subsection R307-343-5(1)(a), change the date on which the work practice implementation plan shall be completed, from April 5, 1999, to August 1, 1999. In Subsection R307-343-5(2)(a), change the date after which new personnel must be trained upon hiring from February 4, 1999, to June 2, 1999, and change the date of training for existing personnel from August 4, 1999, to December 4, 1999. In Subsection R307-343-9(2), change the date for submittal of the initial compliance report from April 5, 1999, to August 1, 1999. In Subsection R307-343-9(3), change the date of submittal of the first semiannual report from July 7, 1999, to January 2, 2000, and subsequent reports shall be due no later than July 2 and January 2 thereafter.

(DAR Note: The original proposed new rule upon which this change in proposed rule is based was published in the December 15, 1998, issue of the Utah State Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a) and 19-2-104(3)(e)
FEDERAL REQUIREMENT FOR THIS RULE: 42 U.S.C. 7511a(b)(2)

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: No change from original proposal.
LOCAL GOVERNMENTS: Local governments are not affected by this rule.
OTHER PERSONS: Small cost savings due to postponing compliance with the requirements by three to six months for three operators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Small cost savings due to postponing compliance with the requirements by three to six months for three operators. (Three additional operators are required to comply under other rules covering hazardous air pollutants.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: During the comment period, affected sources asked for more time to research the materials that they can use to meet the emission standard, while meeting the needs of their customers. Extending the

compliance date will not adversely affect the public health of Utah's citizens--Dianne R. Nielson.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Air Quality
150 North 1950 West
Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-343. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations.

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R307-343-5. Work Practice Standards.

(1) Work Practice Implementation Plan.

(a) Each owner or operator of an affected source subject to R307-343 shall prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the topics specified in R307-343-5(2) through (10). The plan shall be completed no later than [April 5]August 1, 1999. The owner or operator of the affected source shall comply with each provision of the work practice implementation plan. The written work practice implementation plan shall be available for inspection by the executive secretary, upon request. If the executive secretary determines that the work practice implementation plan does not adequately address each of the topics specified in (2) through (10) below or that the plan does not include sufficient mechanisms for ensuring that the work practice standards are being implemented, the executive secretary may require the affected source to modify the plan.

(2) Operator Training.

(a) Each owner or operator of an affected source shall train new and existing personnel, including contract workers, who are involved in finishing, gluing, cleaning, or washoff operations, use of manufacturing equipment, or implementation of the requirements of R307-343. All new personnel, those hired after [February 4]June 2, 1999, shall be trained upon hiring. All existing personnel, those hired before [February 4]June 2, 1999, shall be trained by

[August]December 4, 1999. All personnel shall be given refresher training annually.

(b) The affected source shall maintain a copy of the training program with the work practice implementation plan. The training program shall include, at a minimum, the following:

- (i) A list of all current personnel by name and job description that are required to be trained;
- (ii) An outline of the subjects to be covered in the initial and refresher training for each position or group of personnel;
- (iii) Lesson plans for courses to be given at the initial and the annual refresher training that include, at a minimum, appropriate application techniques, appropriate cleaning and washoff procedures, appropriate equipment setup and adjustment to minimize finishing material usage and overspray, and appropriate management of cleanup wastes; and
- (iv) A description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion and a record of the training date for all personnel.

(3) Leak Inspection and Maintenance Plan. Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan that specifies:

- (a) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply finishing materials, or organic solvents;
- (b) An inspection schedule;
- (c) Methods for documenting the date and results of each inspection and any repairs that were made;
- (d) The time elapsed between identifying the leak and making the repair, using at a minimum the following schedule:
  - (i) A first attempt at repair, such as tightening of packing glands, shall be made no later than five working days after the leak is detected; and
  - (ii) Final repairs shall be made within 15 working days, unless the leaking equipment is to be replaced by a new purchase, in which case repairs shall be completed within three months.

(4) Cleaning and Washoff Solvent Accounting System. Each owner or operator of an affected source shall develop an organic solvent accounting form to record:

- (a) The quantity and type of organic solvent used each month for washoff and cleaning;
- (b) The number of pieces washed off each month, and the reason for the washoff; and
- (c) The net quantity of spent organic solvent generated from each washoff and cleaning operation each month, and whether it is recycled onsite or disposed offsite. The net quantity of spent solvent is equivalent to the total amount of organic solvent that is generated from the activity minus any organic solvent that is reused onsite for operations other than cleaning or washoff and any organic solvent that was sent offsite for disposal.

(5) Spray Booth Cleaning. Each owner or operator of an affected source shall not use compounds containing more than 8.0 percent by weight of volatile organic compound for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, the affected source shall use no more than 1.0

gallon of organic solvent to prepare the booth prior to applying the booth coating.

(6) Storage Requirements. Each owner or operator of an affected source shall use normally closed containers for storing finishing, cleaning, and washoff materials.

(7) Application Equipment Requirements. Each owner or operator of an affected source shall use conventional air spray guns for applying finishing materials only under any of the following circumstances:

- (a) To apply finishing materials that have a volatile organic compound content no greater than 1.0 kilogram per kilogram of solids, as applied;
- (b) For touch-up and repair under the following circumstances:
  - (i) The touchup and repair occurs after completion of the finishing operation; or
  - (ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons.

(c) When the spray gun is aimed and triggered automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device;

(e) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0 percent of the total gallons of finishing material used during that semiannual reporting period; or

(f) The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The affected source shall demonstrate technical or economic infeasibility by submitting to the executive secretary a videotape, a technical report, or other documentation that supports the affected source's claim of technical or economic infeasibility. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

- (i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or
- (ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(8) Line Cleaning. Each owner or operator of an affected source shall pump or drain all organic solvent used for line cleaning into a normally closed container.

(9) Gun Cleaning. Each owner or operator of an affected source shall collect all organic solvent used to clean spray guns into a normally closed container.

(10) Washoff Operations. Each owner or operator of an affected source shall control emissions from washoff operations by using normally closed tanks for washoff and minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.

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**R307-343-9. Reporting Requirements.**

(1) The owner or operator of an affected source using a control system to fulfill the requirements R307-343 is subject to

R307-214-2 in which the reporting requirements of 40 CFR Part 63, subpart A are incorporated by reference; and to the following reporting requirements:

(2) The owner or operator of an affected source subject to R307-343 shall submit an initial compliance report no later than ~~[April 5]~~ August 1, 1999. The report shall include the items required by R307-343-6(3).

(3) The owner or operator of an affected source subject to R307-343 and demonstrating compliance in accordance with R307-343-6(2)(a) or (b) shall submit a semiannual report covering the previous six months of wood furniture manufacturing operations according to the following schedule:

(a) The first report shall be submitted no later than ~~[July 7, 1999]~~ January 2, 2000.

(b) Subsequent reports shall be submitted no later than ~~[January 7 and July 7]~~ July 2 and January 2 each year thereafter.

(c) Each semiannual report shall include the information required by R307-343-6(4), a statement of whether the affected source was in compliance or noncompliance. If the affected source was not in compliance, the measures taken to bring the affected source into compliance shall be reported.

**KEY: air pollution, ozone, wood furniture\*, coatings\***  
**1999** **19-2-104(1)(a)**  
**19-2-104(3)(e)**



**Insurance, Administration**  
**R590-120**  
**(Second CPR)**  
**Surety Bond Forms**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 21339  
 FILED: 04/15/1999, 09:54  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are in response to concerns expressed during this rule's second comment period.

SUMMARY OF THE RULE OR CHANGE: Only one change is being made to this rule. A new Subsection R590-120-3(2) has been added requiring the filing of bail bond surety forms used by surety insurers and bail bond surety companies to be filed in accordance with Section 31A-21-201.

**(DAR Note:** This is the second change in proposed rule (CPR) for R590-120. The original amendment upon which the first CPR was based was published in the August 15, 1998, issue of the *Utah State Bulletin*. The first CPR upon which this CPR is based was published in the January 1, 1999, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-21-101

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: These latest changes in the rule create the same effect as the original filing of this current rule change. Therefore, there will be no change in the financial impact of these changes.

❖LOCAL GOVERNMENTS: These latest changes in the rule create the same effect as the original filing of this current rule change. Therefore, there will be no change in the financial impact of these changes.

❖OTHER PERSONS: These latest changes in the rule create the same effect as the original filing of this current rule change. Therefore, there will be no change in the financial impact of these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These latest changes in the rule create the same effect as the original filing of this current rule change. Therefore, there will be no change in the financial impact of these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes made in this third filing will not increase or reduce the financial impact to state or local government, insurance licensees or the public as already reported in the first filing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Insurance  
 Administration  
 3110 State Office Building  
 Salt Lake City, UT 84114, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at [jdmain.jwhitby@state.ut.us](mailto:jdmain.jwhitby@state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/01/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**  
**R590-120. Surety Bond Forms.**  
**R590-120-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Utah Insurance Code, and Subsection 31A-21-101(5) which authorizes rules exempting classes of insurance contracts from any or all provisions of Chapter 21, Title 31A of the Utah Code.

**R590-120-2. Purpose and Scope.**

The purpose of this rule is to exempt certain surety bond forms from the form filing requirements and other requirements of Chapter 21.

This rule shall apply to all insurers transacting surety insurance in this state.

**R590-120-3. Rule.**

(1) Surety insurance forms, except bail bond insurance forms, are exempt from the following provisions of Chapter 21: Sections 31A-21-106, 31A-21-201, 31A-21-303, 31A-21-308 and 31A-21-312.

(2) Bail bond surety forms used by surety insurers and bail bond surety companies must be filed in accordance with 31A-21-201.

**R590-120-4. Severability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstance may not be affected.

**KEY: insurance rule**

**1999**

**Notice of Continuation May 7, 1997**

**31A-2-201**

**31A-21-101**



**End of the Notices of Changes in Proposed Rules Section**

# NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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## Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

## Commerce

### Occupational and Professional Licensing

No. 21903 (AMD): R156-31b. Nurse Practice Act Rules.

Published: March 15, 1999

Effective: April 15, 1999

No. 21899 (AMD): R156-62-302. Qualifications for Registration.

Published: March 15, 1999

Effective: April 15, 1999

## Crime Victim Reparations

### Administration

No. 21904 (AMD): R270-1. Award and Reparation Standards.

Published: March 15, 1999

Effective: April 15, 1999

## Education

### Administration

No. 21902 (AMD): R277-436. Gang Prevention and Intervention Programs in the Schools.

Published: March 15, 1999

Effective: April 15, 1999

## Environmental Quality

### Air Quality

No. 21782 (AMD): R307-101-2. Definitions.

Published: February 1, 1999

Effective: April 8, 1999

### Solid and Hazardous Waste

No. 21856 (AMD): R315-2-2. Definition of Solid Waste.

Published: March 1, 1999

Effective: April 15, 1999

## Fair Corporation (Utah State)

### Administration

No. 21872 (AMD): R325-1. Utah State Fair Competitive Exhibitor Rules.

Published: March 1, 1999

Effective: April 5, 1999

No. 21873 (AMD): R325-2. Utah State Fair Commercial Exhibitor Rules.

Published: March 1, 1999

Effective: April 5, 1999

No. 21874 (AMD): R325-3. Utah State Fair Patron Rules.

Published: March 1, 1999

Effective: April 5, 1999

No. 21875 (AMD): R325-4. Interim Patrons Rules (Other Than Utah State Fair).

Published: March 1, 1999

Effective: April 5, 1999

No. 21876 (AMD): R325-5. Interim Renters Rules (Other Than Utah State Fair).

Published: March 1, 1999

Effective: April 5, 1999

## Health

### Health Systems Improvement, Health Facility Licensure

No. 21796 (AMD): R432-100-23. Blood Services.

Published: February 15, 1999

Effective: April 7, 1999

No. 21797 (REP): R432-149. Intermediate Care Facility.

Published: February 15, 1999

Effective: April 7, 1999

## Human Services

### Recovery Services

No. 21870 (AMD): R527-39. Applicant/Recipient Cooperation.

Published: March 1, 1999

Effective: April 5, 1999

No. 21871 (AMD): R527-56. In-Kind Support.

Published: March 1, 1999

Effective: April 5, 1999

## NOTICES OF RULE EFFECTIVE DATES

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### Labor Commission

#### Adjudication

No. 21845 (AMD): R602-2-1. Pleadings and Discovery.

Published: March 1, 1999

Effective: April 5, 1999

No. 21846 (AMD): R602-2-4. Attorney Fees.

Published: March 1, 1999

Effective: April 5, 1999

#### Occupational Safety and Health

No. 21847 (AMD): R614-1-4. Incorporation of Federal Standards.

Published: March 1, 1999

Effective: April 5, 1999

### Public Safety

#### Highway Patrol

No. 21882 (NEW): R714-600. Performance Standards for Tow-Truck Motor Carriers.

Published: March 15, 1999

Effective: April 15, 1999

### Workforce Services

#### Employment Development

No. 21763 (AMD): R986-414. Income.

Published: January 15, 1999

Effective: April 8, 1999

**End of the Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 1999, including notices of effective date received through April 15, 1999, the effective dates of which are no later than May 1, 1999. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).

## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	21887	NSC	03/05/99	Not Printed
R25-7	Travel-Related Reimbursements for State Employees	21888	NSC	03/05/99	Not Printed
R25-8	Meal Allowance	21889	NSC	03/05/99	Not Printed
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	21751	NEW	03/18/99	99-2/2
<b>AGRICULTURE AND FOOD</b>					
<u>Administration</u>					
R51-5	Grazing Advisory Boards	21884	5YR	02/22/99	99-6/27
<u>Plant Industry</u>					
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	21701	AMD	01/15/99	98-24/8
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	21808	AMD	03/18/99	99-4/7

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R156-24a	Physical Therapist Practice Act Rules	21716	AMD	see CPR	98-24/11
R156-24a	Physical Therapist Practice Act Rules	21716	CPR	03/09/99	99-3/56
R156-28	Veterinary Practice Act Rules	21753	AMD	02/18/99	99-2/3
R156-31b	Nurse Practice Act Rules	21903	AMD	04/15/99	99-6/4
R156-37c	Utah Controlled Substance Precursor Act Rules	21908	5YR	03/02/99	99-7/54
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	21905	5YR	03/01/99	99-6/27
R156-50	Private Probation Provider Licensing Act Rules	21822	AMD	03/18/99	99-4/9
R156-62-302	Qualifications for Registration	21899	AMD	04/15/99	99-6/6
R156-63	Security Personnel Licensing Act Rules	21855	AMD	04/01/99	99-5/7
R156-74	Certified Shorthand Reporters Licensing Act Rules	21812	NEW	03/18/99	99-4/12
R156-78	Rules of the Certified Shorthand Reporters Licensing Board	21813	REP	03/18/99	99-4/13
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R251-105	Applicant Qualifications for Employment with Department of Corrections	21828	5YR	02/01/99	99-4/65
R251-105	Applicant Qualifications for Employment with Department of Corrections	21829	AMD	03/29/99	99-4/15
<b>CRIME VICTIM REPARATIONS</b>					
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R270-1	Award and Reparation Standards	21904	AMD	04/15/99	99-6/7
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R277-102	Adjudicative Proceedings	21893	5YR	02/26/99	99-6/28
R277-413	Accreditation of Secondary Schools, Alternative or Special Purpose Schools	21823	NEW	03/22/99	99-4/16
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	21894	5YR	02/26/99	99-6/28
R277-436	Gang Prevention and Intervention Programs in the Schools	21902	AMD	04/15/99	99-6/12
R277-437	Student Enrollment Options	21677	NEW	01/05/99	98-23/4
R277-455	Standards and Procedures for Building Plan Review	21895	5YR	02/26/99	99-6/29
R277-470	Distribution of Funds for Charter Schools	21773	NSC	01/27/99	Not Printed
R277-519	Educator In-service Procedures and Credit	21824	AMD	03/22/99	99-4/19
R277-601	Standards for Utah School Buses and Operations	21896	5YR	02/26/99	99-6/29

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R277-712	Advanced Placement Programs	21897	5YR	02/26/99	99-6/30
R277-733	Adult Basic Skills and Adult High School Programs	21826	AMD	03/22/99	99-4/22
R277-734	Standards and Procedures for Adult Education Section 353 Funds	21898	5YR	02/26/99	99-6/30
R277-735	Standards and Procedures for Corrections Education Programs Serving Inmates of the Utah Department of Corrections	21678	NEW	01/05/99	98-23/6
<u>Applied Technology Education (Board for), Rehabilitation</u>					
R280-201	USOR ADA Complaint Procedure	21679	NEW	01/05/99	98-23/8
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	21680	NEW	01/05/99	98-23/10
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R307-150	Emission Inventories	21591	CPR	03/04/99	99-3/57
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R307-155	Hazardous Air Pollutant Inventory	21593	NEW	see CPR	98-22/62
R307-155	Hazardous Air Pollutant Inventory	21593	CPR	03/04/99	99-3/59
R307-158	Emission Statement Inventory	21594	NEW	see CPR	98-22/64
R307-158	Emission Statement Inventory	21594	CPR	03/04/99	99-3/60
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R307-214	National Emission Standards for Hazardous Air Pollutants	21844	5YR	02/03/99	99-5/57
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	21595	AMD	01/07/99	98-22/66
R307-221	Emission Controls for Existing Municipal Solid Waste Landfills	21850	NSC	02/27/99	Not Printed
R307-302-2	No-Burn Periods for PM10	21570	AMD	01/07/99	98-22/67
R307-415	Permits: Operating Permit Requirements	21900	5YR	03/01/99	99-6/31
R307-415-3	Definitions	21589	AMD	01/07/99	98-22/68
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R313-19	Requirements of General Applicability to Licensing of Radioactive Material	21686	AMD	03/12/99	98-24/33
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R313-38	Radiation Safety Requirements for Wireline Service Operation and Subsurface Tracer Studies	21807	5YR	01/25/99	99-4/66
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R315-2	General Requirements - Identification and Listing of Hazardous Waste	21459	CPR	02/15/99	99-1/28
R315-2-2	Definition of Solid Waste	21856	AMD	04/15/99	99-5/20
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R315-304	Industrial Solid Waste Landfill Requirements	21439	CPR	01/05/99	98-23/45
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R317-10	Certification of Wastewater Works Operators	21449	CPR	02/04/99	99-1/35
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R325-3	Utah State Fair Patron Rules	21874	AMD	04/05/99	99-5/24
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	21875	AMD	04/05/99	99-5/25
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<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
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R414-54	Speech-Language Pathology Services	21935	5YR	03/31/99	99-8/73
R414-58	Children's Organ Transplants	21857	5YR	02/12/99	99-5/58
R414-303	Coverage Groups	21529	AMD	01/05/99	98-21/31
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R426-2	Air Medical Service Rules	21688	AMD	01/22/99	98-24/59
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R426-4	Emergency Medical Dispatcher Rules	21695	AMD	01/22/99	98-24/67
R426-6	Emergency Medical Services Grants Program Rules	21657	AMD	03/01/99	98-23/23
<u>Health Data Analysis</u>					
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	21755	AMD	03/01/99	99-2/10
<u>Health Systems Improvement, Child Care Licensing</u>					
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R432-1	General Health Care Facility Rules	21795	5YR	01/20/99	99-4/67
R432-2	General Licensing Provisions	21775	5YR	01/11/99	99-3/68
R432-3	General Health Care Facility Rules Inspection and Enforcement	21776	5YR	01/11/99	99-3/68
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R432-5	Nursing Facility Construction	21816	5YR	01/29/99	99-4/68
R432-6	Assisted Living Facility General Construction	21700	AMD	01/29/99	98-24/69
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R432-149	Intermediate Care Facility	21818	5YR	01/29/99	99-4/69
R432-149	Intermediate Care Facility	21797	REP	04/07/99	99-4/26
R432-150	Nursing Care Facility Rules	21752	R&R	02/25/99	99-2/15
R432-250	Residential Health Care Facilities	21528	REP	01/20/99	98-21/42
R432-270	Assisted Living Facilities	21722	R&R	01/29/99	98-24/70
R432-300	Residential Health Care Facility - Limited Capacity - Type N	21561	R&R	01/11/99	98-22/73
R432-650	End Stage Renal Disease Facility Rules	21562	AMD	01/11/99	98-22/82
R432-750	Hospice Rule	21734	AMD	02/25/99	99-1/3
<u>Health Systems Improvement, Primary Care and Rural Health</u>					
R434-10	Physicians and Physician Assistants Grant and Scholarship Program	21802	AMD	03/26/99	99-4/36
R434-20	Special Population Health Care Provider Financial Assistance Program	21666	NEW	01/07/99	98-23/26
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R438-13	Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah	21928	5YR	03/18/99	99-8/73
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R495-879	Parental Support for Children in Care	21916	5YR	03/11/99	99-7/56
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R501-1	General Provisions	21768	NSC	01/27/99	Not Printed
R501-14	Criminal Background Screening	21821	AMD	03/22/99	99-4/47
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R510-103	Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area	21730	AMD	02/03/99	99-1/14
R510-111	Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC)	21885	5YR	02/23/99	99-6/31
R510-111	Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC)	21886	NSC	02/27/99	Not Printed
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R512-25	Child Protective Services Notification and Due Process	21465	AMD	01/21/99	98-19/78
<u>Recovery Services</u>					
R527-39	Applicant/Recipient Cooperation	21870	AMD	04/05/99	99-5/33
R527-56	In-Kind Support	21871	AMD	04/05/99	99-5/35

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R527-210	Guidelines for Setting Child Support Awards	21809	5YR	01/26/99	99-4/70
R527-210	Guidelines for Setting Child Support Awards	21810	NSC	01/27/99	Not Printed
R527-378	Garnishment of Social Security Benefits	21726	AMD	01/15/99	98-24/90
R527-430	Administrative Notice of Lien-Levy Procedures	21811	AMD	03/18/99	99-4/49
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<u>Administration</u>					
R590-96	Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities	21766	AMD	03/16/99	99-2/46
R590-135	Accounting Records Rule	21723	REP	03/18/99	98-24/91
R590-160	Administrative Proceedings	21804	5YR	01/22/99	99-4/71
R590-165	Health Benefit Plans	21790	AMD	03/16/99	99-3/23
R590-167	Individual and Small Employer Health Insurance Rule	21791	AMD	03/11/99	99-3/24
R590-170	Fiduciary and Trust Account Obligations	21725	NEW	see CPR	98-24/95
R590-170	Fiduciary and Trust Account Obligations	21725	CPR	03/18/99	99-3/62
R590-175	Basic Health Care Plan Rule	21792	AMD	03/11/99	99-3/29
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<u>Adjudication</u>					
R602-2-1	Pleadings and Discovery	21845	AMD	04/05/99	99-5/38
R602-2-4	Attorney Fees	21846	AMD	04/05/99	99-5/40
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R616-3	Elevator Rules	21454	AMD	01/28/99	98-19/84
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R647-2	Exploration	21757	AMD	02/26/99	99-2/54
R647-3	Small Mining Operations	21758	AMD	02/26/99	99-2/55
R647-4	Large Mining Operations	21759	AMD	02/26/99	99-2/56
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R657-27	License Agent Procedures	21827	AMD	03/18/99	99-4/51
R657-38	Dedicated Hunter Program	21719	AMD	01/15/99	98-24/107
R657-42	Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	21720	AMD	01/15/99	98-24/109
R657-43	Landowner Permits	21721	AMD	01/15/99	98-24/110
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R698-4	Certification of the Law Enforcement Agency of a Private College or University	21779	NEW	03/05/99	99-3/33
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R708-2	Commercial Driver Training Schools	21579	R&R	see CPR	98-22/115
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R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	21710	AMD	01/15/99	98-24/117
R710-6	Liquefied Petroleum Gas Rules	21733	AMD	02/02/99	99-1/17
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R710-8	Day Care Rules	21712	CPR	02/23/99	99-2/88
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R746-365	Intercarrier Service Quality	20997	NEW	see CPR	98-9/50
R746-365	Intercarrier Service Quality	20997	CPR	01/13/99	98-18/39
R746-365	Intercarrier Service Quality	21774	NSC	01/15/99	Not Printed
<b>REGENTS (BOARD OF)</b>					
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R765-607	Utah Higher Education Tuition Assistance Program	21673	NEW	01/04/99	98-23/38
R765-607	Utah Higher Education Tuition Assistance Program	21771	NSC	01/27/99	Not Printed
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R850-20-175	Coal Leasing of Lands Acquired in Public Law 105-335 Exchanges	21909	EXP	03/03/99	99-7/52
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<u>Auditing</u>					
R865-6F-34	Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701	21760	AMD	03/16/99	99-2/58
R865-6F-35	S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703	21761	AMD	03/16/99	99-2/59
<b>DAR Note:</b> The following three sections will be combined to create one new rule, "R865-7H. Environmental Assurance Fee."					
R865-7H-1	Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5	21737	NEW	03/16/99	99-1/22
R865-7H-2	Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5	21738	NEW	03/16/99	99-1/24
R865-7H-3	Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5	21739	NEW	03/16/99	99-1/24
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R884-24P-52	Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103	21326	AMD	see CPR	98-16/58
R884-24P-52	Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103	21326	CPR	01/12/99	98-23/46
R884-24P-53	1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21777	EMR	01/12/99	99-3/64
R884-24P-53	1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21789	AMD	03/16/99	99-3/46
R884-24P-61	1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405	21762	AMD	03/16/99	99-2/60
R884-24P-63	Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406	21676	AMD	03/16/99	98-23/42

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R912-3	Restriction of Truck Traffic on SR-128. Legal and Permitted Vehicles	21799	NSC	01/27/99	Not Printed
R912-8	Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah	21800	NSC	01/27/99	Not Printed
R912-76	Single Tire Configuration	21801	NSC	01/27/99	Not Printed
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R986-414	Income	21581	AMD	01/20/99	98-22/133
R986-414	Income	21763	AMD	04/08/99	99-2/64
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R986-501	Displaced Homemaker Program	21883	5YR	02/19/99	99-6/32
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R994-405	Ineligibility for Benefits	21745	AMD	02/17/99	99-2/65
R994-405	Ineligibility for Benefits	21746	AMD	02/17/99	99-2/72
R994-405	Ineligibility for Benefits	21748	AMD	02/17/99	99-2/77
R994-405	Ineligibility for Benefits	21749	AMD	02/17/99	99-2/83
R994-405	Ineligibility for Benefits	21747	NSC	02/20/99	Not Printed
R994-600	Dislocated Workers	21770	AMD	03/05/99	99-3/51

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## RULES INDEX - BY KEYWORD (SUBJECT)

### ABBREVIATIONS

AMD = Amendment  
CPR = Change in proposed rule  
EMR = Emergency rule (120 day)  
NEW = New rule  
5YR = Five-Year Review  
EXD = Expired

NSC = Nonsubstantive rule change  
REP = Repeal  
R&R = Repeal and reenact  
\* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<b><u>ADMINISTRATIVE RESPONSIBILITY</u></b>					
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<b><u>ADULT EDUCATION</u></b>					
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	21826	R277-733	AMD	03/22/99	99-4/22
	21898	R277-734	5YR	02/26/99	99-6/30
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	21886	R510-111	NSC	02/27/99	Not Printed
<b><u>AGRICULTURE ASSOCIATIONS</u></b>					
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	21782	R307-101-2	AMD	04/08/99	99-3/4
	21591	R307-150	NEW	see CPR	98-22/56
	21591	R307-150	CPR	03/04/99	99-3/57
	21592	R307-155	REP	03/04/99	98-22/60
	21593	R307-155	NEW	see CPR	98-22/62
	21593	R307-155	CPR	03/04/99	99-3/59
	21594	R307-158	NEW	see CPR	98-22/64
	21594	R307-158	CPR	03/04/99	99-3/60
	21504	R307-170	R&R	see CPR	98-20/5
	21504	R307-170	CPR	04/01/99	99-5/51
	21844	R307-214	5YR	02/03/99	99-5/57

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	21850	R307-221	NSC	02/27/99	Not Printed
	21570	R307-302-2	AMD	01/07/99	98-22/67
	21900	R307-415	5YR	03/01/99	99-6/31
	21589	R307-415-3	AMD	01/07/99	98-22/68
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	21910	R307-417	5YR	03/05/99	99-7/55
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Administrative Services, Finance	21888	R25-7	NSC	03/05/99	Not Printed
<b><u>ALLOWANCE</u></b>					
Administrative Services, Finance	21889	R25-8	NSC	03/05/99	Not Printed
<b><u>ALTERNATIVE DISPUTE RESOLUTION</u></b>					
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Workforce Services, Employment Development	21883	R986-501	5YR	02/19/99	99-6/32
<b><u>APPRAISAL</u></b>					
Tax Commission, Property Tax	21777	R884-24P-53	EMR	01/12/99	99-3/64
	21789	R884-24P-53	AMD	03/16/99	99-3/46
	21762	R884-24P-61	AMD	03/16/99	99-2/60
	21676	R884-24P-63	AMD	03/16/99	98-23/42
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<b><u>BEAM LIMITATION</u></b>					
Environmental Quality, Radiation Control	21682	R313-28	AMD	03/12/99	98-24/46
<b><u>BENEFITS</u></b>					
Workforce Services, Employment Development	21582	R986-417	AMD	01/20/99	98-22/134
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	21721	R657-43	AMD	01/15/99	98-24/110
<b><u>BOARDS</u></b>					
Administrative Services, Finance	21887	R25-5	NSC	03/05/99	Not Printed
<b><u>BUDGETING</u></b>					
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<b><u>CHARTER SCHOOLS</u></b>					
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<b><u>CHILD ABUSE</u></b>					
Human Services, Child and Family Services	21465	R512-25	AMD	01/21/99	98-19/78
<b><u>CHILD CARE FACILITIES</u></b>					
Health, Health Systems Improvement, Child Care Licensing	21769	R430-100-13	AMD	02/25/99	99-2/13
<b><u>CHILDREN'S HEALTH BENEFITS</u></b>					
Health, Children's Health Insurance Program	21669	R382-10	AMD	01/07/99	98-23/12
	21843	R382-10	NSC	02/27/99	Not Printed
<b><u>CHILD SUPPORT</u></b>					
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	21871	R527-56	AMD	04/05/99	99-5/35
	21675	R527-200	AMD	01/04/99	98-23/33
	21809	R527-210	5YR	01/26/99	99-4/70
	21810	R527-210	NSC	01/27/99	Not Printed
	21726	R527-378	AMD	01/15/99	98-24/90
	21811	R527-430	AMD	03/18/99	99-4/49
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<b><u>CONTAMINATION</u></b>					
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<b><u>CONTINUOUS MONITORING</u></b>					
Environmental Quality, Air Quality	21504	R307-170	R&R	see CPR	98-20/5
	21504	R307-170	CPR	04/01/99	99-5/51
<b><u>CONTROLLED SUBSTANCES</u></b>					
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	21829	R251-105	AMD	03/29/99	99-4/15
<b><u>COURT REPORTING</u></b>					
Commerce, Occupational and Professional Licensing	21812	R156-74	NEW	03/18/99	99-4/12
	21813	R156-78	REP	03/18/99	99-4/13
<b><u>COVERAGE GROUPS</u></b>					
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Education, Administration	21678	R277-735	NEW	01/05/99	98-23/6
<b><u>CUSTODY OF CHILDREN</u></b>					
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	21712	R710-8	CPR	02/23/99	99-2/88
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	21782	R307-101-2	AMD	04/08/99	99-3/4
Environmental Quality, Radiation Control	21684	R313-12-3	AMD	03/12/99	98-24/26
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Environmental Quality, Radiation Control	21682	R313-28	AMD	03/12/99	98-24/46
<b><u>DISABLED PERSONS</u></b>					
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	21680	R280-202	NEW	01/05/99	98-23/10
<b><u>DISCIPLINARY PROBLEMS</u></b>					
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<b><u>DISPLACED HOMEMAKERS</u></b>					
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<b><u>DRINKING WATER</u></b>					
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	21554	R309-113	AMD	01/15/99	98-21/20
<b><u>DRIVER EDUCATION</u></b>					
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	21649	R426-1-8	AMD	01/07/99	98-23/22
	21688	R426-2	AMD	01/22/99	98-24/59
	21694	R426-3	AMD	01/22/99	98-24/61
	21695	R426-4	AMD	01/22/99	98-24/67
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	21589	R307-415-3	AMD	01/07/99	98-22/68
<b><u>EMPLOYEE'S RIGHTS</u></b>					
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	21746	R994-405	AMD	02/17/99	99-2/72
	21748	R994-405	AMD	02/17/99	99-2/77
	21749	R994-405	AMD	02/17/99	99-2/83
	21747	R994-405	NSC	02/20/99	Not Printed
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	21747	R994-405	NSC	02/20/99	Not Printed
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	21746	R994-405	AMD	02/17/99	99-2/72
	21748	R994-405	AMD	02/17/99	99-2/77
	21749	R994-405	AMD	02/17/99	99-2/83
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<b>DAR Note:</b> The following three sections will be combined to create one new rule, "R865-7H. Environmental Assurance Fee."					
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	21738	R865-7H-2	NEW	03/16/99	99-1/24
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	21874	R325-3	AMD	04/05/99	99-5/24
	21875	R325-4	AMD	04/05/99	99-5/25
	21876	R325-5	AMD	04/05/99	99-5/26
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	21712	R710-8	CPR	02/23/99	99-2/88
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	21771	R765-607	NSC	01/27/99	Not Printed
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	21706	R986-419	AMD	01/20/99	98-24/124
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	21821	R501-14	AMD	03/22/99	99-4/47
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	21593	R307-155	NEW	see CPR	98-22/62
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	21735	R307-417	AMD	03/05/99	99-1/3
	21910	R307-417	5YR	03/05/99	99-7/55
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School and Institutional Trust Lands, Administration	21909	R850-20-175	EXP	03/03/99	99-7/52
<b><u>PRISONS</u></b>					
Corrections, Administration	21828	R251-105	5YR	02/01/99	99-4/65
	21829	R251-105	AMD	03/29/99	99-4/15
<b><u>PRIVATE PROBATION PROVIDER</u></b>					
Commerce, Occupational and Professional Licensing	21822	R156-50	AMD	03/18/99	99-4/9
<b><u>PROBATION</u></b>					
Commerce, Occupational and Professional Licensing	21822	R156-50	AMD	03/18/99	99-4/9
<b><u>PROBATIONERS</u></b>					
Corrections, Administration	21858	R251-103	5YR	02/12/99	99-5/57
<b><u>PROFESSIONAL COMPETENCY</u></b>					
Education, Administration	21824	R277-519	AMD	03/22/99	99-4/19
<b><u>PROPERTY TAX</u></b>					
Tax Commission, Property Tax	21777	R884-24P-53	EMR	01/12/99	99-3/64
	21789	R884-24P-53	AMD	03/16/99	99-3/46
	21762	R884-24P-61	AMD	03/16/99	99-2/60
	21676	R884-24P-63	AMD	03/16/99	98-23/42
<b><u>PUBLIC BUILDINGS</u></b>					
Public Safety, Fire Marshal	21710	R710-4	AMD	01/15/99	98-24/117
<b><u>PUBLIC EDUCATION</u></b>					
Education, Administration	21677	R277-437	NEW	01/05/99	98-23/4
	21678	R277-735	NEW	01/05/99	98-23/6

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<b><u>PUBLIC SCHOOLS</u></b>					
Education, Administration	21902	R277-436	AMD	04/15/99	99-6/12
<b><u>PUBLIC UTILITIES</u></b>					
Public Service Commission, Administration	20997	R746-365	NEW	see CPR	98-9/50
	20997	R746-365	CPR	01/13/99	98-18/39
	21774	R746-365	NSC	01/15/99	Not Printed
<b><u>QUARANTINE</u></b>					
Agriculture and Food, Plant Industry	21701	R68-15	AMD	01/15/99	98-24/8
	21808	R68-15	AMD	03/18/99	99-4/7
<b><u>RADIATION</u></b>					
Environmental Quality, Radiation Control	21806	R313-30	5YR	01/25/99	99-4/66
<b><u>RADIATION SAFETY</u></b>					
Environmental Quality, Radiation Control	21806	R313-30	5YR	01/25/99	99-4/66
<b><u>RADIOACTIVE MATERIAL</u></b>					
Environmental Quality, Radiation Control	21685	R313-15-906	AMD	03/12/99	98-24/32
	21805	R313-21	5YR	01/25/99	99-4/65
	21807	R313-38	5YR	01/25/99	99-4/66
<b><u>RATES</u></b>					
Administrative Services, Finance	21887	R25-5	NSC	03/05/99	Not Printed
	21889	R25-8	NSC	03/05/99	Not Printed
<b><u>RECIPROCITY</u></b>					
Environmental Quality, Radiation Control	21686	R313-19	AMD	03/12/99	98-24/33
<b><u>RECORDS APPEAL HEARINGS</u></b>					
Administrative Services, Records Committee	21751	R35-1	NEW	03/18/99	99-2/2
<b><u>RECREATION</u></b>					
Natural Resources, Wildlife Resources	21719	R657-38	AMD	01/15/99	98-24/107
<b><u>REHABILITATION</u></b>					
Education, Applied Technology Education (Board for), Rehabilitation	21680	R280-202	NEW	01/05/99	98-23/10
<b><u>REPORTING</u></b>					
Environmental Quality, Air Quality	21590	R307-150	REP	03/04/99	99-22/55
<b><u>REPORTS</u></b>					
Environmental Quality, Air Quality	21591	R307-150	NEW	see CPR	98-22/56
	21591	R307-150	CPR	03/04/99	99-3/57
<b><u>ROYALTIES</u></b>					
School and Institutional Trust Lands, Administration	21909	R850-20-175	EXP	03/03/99	99-7/52
<b><u>RULES AND PROCEDURES</u></b>					
Education, Administration	21893	R277-102	5YR	02/26/99	99-6/28
Fair Corporation (Utah State), Administration	21872	R325-1	AMD	04/05/99	99-5/22
	21873	R325-2	AMD	04/05/99	99-5/23
	21874	R325-3	AMD	04/05/99	99-5/24

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	21875	R325-4	AMD	04/05/99	99-5/25
	21876	R325-5	AMD	04/05/99	99-5/26
Natural Resources, Wildlife Resources	21827	R657-27	AMD	03/18/99	99-4/51
Public Safety, Driver License	21579	R708-2	R&R	see CPR	98-22/115
	21579	R708-2	CPR	03/18/99	99-4/61
<b><u>SAFETY</u></b>					
Environmental Quality, Radiation Control	21685	R313-15-906	AMD	03/12/99	98-24/32
Labor Commission, Occupational Safety and Health	21847	R614-1-4	AMD	04/05/99	99-5/41
Labor Commission, Safety	21454	R616-3	AMD	01/28/99	98-19/84
<b><u>SAFETY REGULATION</u></b>					
Transportation, Motor Carrier, Ports of Entry	21799	R912-3	NSC	01/27/99	Not Printed
<b><u>SCHOLARSHIPS</u></b>					
Health, Health Systems Improvement, Primary Care and Rural Health	21802	R434-10	AMD	03/26/99	99-4/36
	21666	R434-20	NEW	01/07/99	98-23/26
<b><u>SCHOOLS</u></b>					
Education, Administration	21896	R277-601	5YR	02/26/99	99-6/29
Public Safety, Driver License	21579	R708-2	R&R	see CPR	98-22/115
	21579	R708-2	CPR	03/18/99	99-4/61
<b><u>SCHOOL TRANSPORTATION</u></b>					
Education, Administration	21896	R277-601	5YR	02/26/99	99-6/29
<b><u>SECURITY GUARDS</u></b>					
Commerce, Occupational and Professional Licensing	21855	R156-63	AMD	04/01/99	99-5/7
<b><u>SENIOR CENTERS</u></b>					
Human Services, Aging and Adult Services	21730	R510-103	AMD	02/03/99	99-1/14
<b><u>SETTLEMENT</u></b>					
Labor Commission, Adjudication	21845	R602-2-1	AMD	04/05/99	99-5/38
	21846	R602-2-4	AMD	04/05/99	99-5/40
<b><u>SHORTHAND REPORTER</u></b>					
Commerce, Occupational and Professional Licensing	21812	R156-74	NEW	03/18/99	99-4/12
	21813	R156-78	REP	03/18/99	99-4/13
<b><u>SLCC (Salt Lake Community College)</u></b>					
Regents (Board of), Salt Lake Community College	21820	R784-1	NEW	03/18/99	99-4/57
<b><u>SOCIAL SECURITY</u></b>					
Human Services, Recovery Services	21726	R527-378	AMD	01/15/99	98-24/90
<b><u>SOLID WASTE MANAGEMENT</u></b>					
Environmental Quality, Solid and Hazardous Waste	21783	R315-301-2	AMD	03/15/99	99-3/10
	21439	R315-304	AMD	see CPR	98-19/50
	21439	R315-304	CPR	01/05/99	98-23/45
	21772	R315-304-1	NSC	01/05/99	Not Printed

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	21785	R315-305-5	AMD	03/15/99	99-3/18
	21786	R315-315-6	AMD	03/15/99	99-3/19
	21787	R315-317	AMD	03/15/99	99-3/20
	21920	R315-320	5YR	03/12/99	99-7/55
<b><u>SOURCE MATERIAL</u></b>					
Environmental Quality, Radiation Control	21805	R313-21	5YR	01/25/99	99-4/65
<b><u>SOVEREIGN LANDS</u></b>					
Natural Resources; Forestry, Fire and State Lands	21672	R652-70-2300	AMD	01/14/99	98-23/36
<b><u>STATE EMPLOYEES</u></b>					
Administrative Services, Finance	21887	R25-5	NSC	03/05/99	Not Printed
	21888	R25-7	NSC	03/05/99	Not Printed
	21889	R25-8	NSC	03/05/99	Not Printed
<b><u>STATE RECORDS COMMITTEE</u></b>					
Administrative Services, Records Committee	21751	R35-1	NEW	03/18/99	99-2/2
<b><u>STOVE</u></b>					
Environmental Quality, Air Quality	21570	R307-302-2	AMD	01/07/99	98-22/67
<b><u>STUDENT COMPETENCY</u></b>					
Education, Administration	21825	R277-702	AMD	03/22/99	99-4/20
<b><u>STUDENTS AT RISK</u></b>					
Education, Administration	21902	R277-436	AMD	04/15/99	99-6/12
<b><u>SURVEYS</u></b>					
Environmental Quality, Radiation Control	21806	R313-30	5YR	01/25/99	99-4/66
	21807	R313-38	5YR	01/25/99	99-4/66
<b><u>TAXATION</u></b>					
Tax Commission, Auditing	21760	R865-6F-34	AMD	03/16/99	99-2/58
	21761	R865-6F-35	AMD	03/16/99	99-2/59
<b>DAR Note:</b> The following three sections will be combined to create one new rule, "R865-7H. Environmental Assurance Fee."					
	21737	R865-7H-1	NEW	03/16/99	99-1/22
	21738	R865-7H-2	NEW	03/16/99	99-1/24
	21739	R865-7H-3	NEW	03/16/99	99-1/24
Tax Commission, Property Tax	21326	R884-24P-52	AMD	see CPR	98-16/58
	21326	R884-24P-52	CPR	01/12/99	98-23/46
	21777	R884-24P-53	EMR	01/12/99	99-3/64
	21789	R884-24P-53	AMD	03/16/99	99-3/46
	21762	R884-24P-61	AMD	03/16/99	99-2/60
	21676	R884-24P-63	AMD	03/16/99	98-23/42
<b><u>TEACHER CERTIFICATION</u></b>					
Education, Administration	21824	R277-519	AMD	03/22/99	99-4/19
<b><u>TELECOMMUNICATIONS</u></b>					
Public Service Commission, Administration	20997	R746-365	NEW	see CPR	98-9/50
	20997	R746-365	CPR	01/13/99	98-18/39
	21774	R746-365	NSC	01/15/99	Not Printed

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<b><u>TIRES</u></b>					
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<b><u>TOWING</u></b>					
Public Safety, Highway Patrol	21882	R714-600	NEW	04/15/99	99-6/25
<b><u>TRAINING PROGRAMS</u></b>					
Workforce Services, Workforce Information and Payment Services	21770	R994-600	AMD	03/05/99	99-3/51
<b><u>TRANSPORTATION</u></b>					
Administrative Services, Finance	21888	R25-7	NSC	03/05/99	Not Printed
Environmental Quality, Radiation Control	21686	R313-19	AMD	03/12/99	98-24/33
<b><u>TRANSPORTATION SAFETY</u></b>					
Transportation, Motor Carrier	21756	R909-1	AMD	03/15/99	99-2/62
<b><u>TRAVEL FUNDS</u></b>					
Human Services, Aging and Adult Services	21885	R510-111	5YR	02/23/99	99-6/31
	21886	R510-111	NSC	02/27/99	Not Printed
<b><u>TRUCKS</u></b>					
Transportation, Motor Carrier	21756	R909-1	AMD	03/15/99	99-2/62
Transportation, Motor Carrier, Ports of Entry	21799	R912-3	NSC	01/27/99	Not Printed
<b><u>UNDERGROUND STORAGE TANKS</u></b>					
Environmental Quality, Environmental Response and Remediation	21854	R311-201	NSC	02/27/99	Not Printed
<b><u>UNEMPLOYED WORKERS</u></b>					
Workforce Services, Workforce Information and Payment Services	21770	R994-600	AMD	03/05/99	99-3/51
<b><u>UNEMPLOYMENT</u></b>					
Workforce Services, Workforce Information and Payment Services	21770	R994-600	AMD	03/05/99	99-3/51
<b><u>UNEMPLOYMENT COMPENSATION</u></b>					
Workforce Services, Workforce Information and Payment Services	21745	R994-405	AMD	02/17/99	99-2/65
	21746	R994-405	AMD	02/17/99	99-2/72
	21748	R994-405	AMD	02/17/99	99-2/77
	21749	R994-405	AMD	02/17/99	99-2/83
<b><u>UNITS</u></b>					
Environmental Quality, Radiation Control	21684	R313-12-3	AMD	03/12/99	98-24/26
<b><u>VETERINARY MEDICINE</u></b>					
Commerce, Occupational and Professional Licensing	21753	R156-28	AMD	02/18/99	99-2/3
<b><u>VICTIM COMPENSATION</u></b>					
Crime Victim Reparations, Administration	21904	R270-1	AMD	04/15/99	99-6/7
<b><u>VICTIMS OF CRIMES</u></b>					
Crime Victim Reparations, Administration	21904	R270-1	AMD	04/15/99	99-6/7

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<b><u>VOLUNTEER</u></b>					
Human Services, Aging and Adult Services	21885	R510-111	5YR	02/23/99	99-6/31
	21886	R510-111	NSC	02/27/99	Not Printed
<b><u>WASTE DISPOSAL</u></b>					
Environmental Quality, Radiation Control	21685	R313-15-906	AMD	03/12/99	98-24/32
Environmental Quality, Solid and Hazardous Waste	21783	R315-301-2	AMD	03/15/99	99-3/10
	21439	R315-304	AMD	see CPR	98-19/50
	21439	R315-304	CPR	01/05/99	98-23/45
	21772	R315-304-1	NSC	01/05/99	Not Printed
	21785	R315-305-5	AMD	03/15/99	99-3/18
	21786	R315-315-6	AMD	03/15/99	99-3/19
	21787	R315-317	AMD	03/15/99	99-3/20
	21920	R315-320	5YR	03/12/99	99-7/55
<b><u>WASTEWATER TREATMENT</u></b>					
Environmental Quality, Water Quality	21449	R317-10	AMD	see CPR	98-19/70
	21449	R317-10	CPR	02/04/99	99-1/35
<b><u>WATER FUNDING</u></b>					
Natural Resources, Water Resources	21736	R653-2	AMD	02/02/99	99-1/15
<b><u>WATER POLLUTION</u></b>					
Environmental Quality, Water Quality	21449	R317-10	AMD	see CPR	98-19/70
	21449	R317-10	CPR	02/04/99	99-1/35
<b><u>WELFARE FRAUD</u></b>					
Human Services, Recovery Services	21675	R527-200	AMD	01/04/99	98-23/33
<b><u>WILDLIFE</u></b>					
Natural Resources, Wildlife Resources	21717	R657-5	AMD	01/15/99	98-24/96
	21827	R657-27	AMD	03/18/99	99-4/51
	21719	R657-38	AMD	01/15/99	98-24/107
	21720	R657-42	AMD	01/15/99	98-24/109
	21721	R657-43	AMD	01/15/99	98-24/110
<b><u>WILDLIFE LAW</u></b>					
Natural Resources, Wildlife Resources	21827	R657-27	AMD	03/18/99	99-4/51
<b><u>WOODBURNING</u></b>					
Environmental Quality, Air Quality	21570	R307-302-2	AMD	01/07/99	98-22/67
<b><u>WORKERS' COMPENSATION</u></b>					
Labor Commission, Adjudication	21845	R602-2-1	AMD	04/05/99	99-5/38
	21846	R602-2-4	AMD	04/05/99	99-5/40
<b><u>X-RAY</u></b>					
Environmental Quality, Radiation Control	21535	R313-16	AMD	01/15/99	98-21/27
	21682	R313-28	AMD	03/12/99	98-24/46
	21806	R313-30	5YR	01/25/99	99-4/66