R65. Agriculture and Food, Marketing and Development.
R65-2. Utah Cherry Marketing Order.
R65-2-1. Authority.

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

R65-2-2. Definitions of Terms.

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

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

C. "Cherries" mean sweet cherries produced for the fresh, brine, and frozen markets.

D. "Producer" means any person in this State in the business of producing or causing to be produced cherries for the fresh, brine, or frozen markets, with at least one acre of trees in production, provided such producers shall not include producers who sell all the commodity direct to the consumer.

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

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

R65-2-3. Board.

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

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry.

C. Successors to original members may be appointed by the Commissioner from names submitted by the industry. Three grower members and one handler member shall be appointed for a term of four year in February of 1980. Two grower members and one handler member shall be appointed for four years in February of 1982.

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

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

F. All decisions of the Board of Control shall be by majority vote.

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

R65-2-4. Provisions of the Order.

A. This order provides for:

1. Uniform grading of cherries for fresh, frozen, or brine markets, sold or offered for sale by producers or handlers. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

2. Advertising and sales promotion to create new or larger markets for cherries grown in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without any reference to a particular brand or trade name. Provided further, that no advertising or sales promotion program shall be authorized which shall make use of false or unwarranted claims in behalf of the product covered by this Order, or disparage the quality, value, sale or use of any other agricultural commodity to supply the market demands of consumers of such commodity.

3. Labeling, marking, or branding of cherries which does not conflict with any rules of the Commissioner or laws of the State of Utah.

4. The Board of Control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of this Order.

B. Expenses - Assessments - Collections and Disbursement.

1. Each producer subject to this Order shall pay to the Board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any producer, subject to this Order, for the collection of such producer's pro rata share of expenses.

2. This assessment shall be set at $2 per ton for brine and frozen cherries and up to $25 per ton for fresh cherries. The discretionary assessment shall be set by the majority vote of the board, and approved by the Commissioner. The assessment is effective June 1, 1984.

3. The assessment of each producer shall be deducted from the producer's gross receipt of sweet cherries by the dealer or producer-handler. All proceeds from the deducted portion shall be paid annually to the Commission upon request of the Board.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request.

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

6. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-2-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

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

R65-2-5. Division of Funds.

Assessment made and monies collected under provisions of this order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising purposes, and

C. research purposes. Such assessments and funds shall

be used solely for the purposes for which they are collected; provided, that no funds be used for political or lobbying activities.

R65-2-6. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request by December 31 for cherries harvested in that harvest year.

R65-2-7. Complaints for Violation - Procedure.

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

R65-2-8. Termination of Order.

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

KEY: promotions
May 1, 1996 **4-2-2(1)(e)**
Notice of Continuation February 15, 2008

R65. Agriculture and Food, Marketing and Development.
R65-5. Utah Red Tart and Sour Cherry Marketing Order.
R65-5-1. Authority.

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

R65-5-2. Definitions of Terms.

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

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

C. "Cherries" mean all marketable Red Tart and Sour cherries produced and sold to manufacturers or consumers.

D. "Producer" means any person in this state in the business of producing or causing to be produced Red Tart or Sour cherries, that has a minimum of 300 trees or has received $500.00 or more from a processor for the previous year's production.

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

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

G. "Processor" means any person engaged in canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other way preserving or changing the form of cherries for the purpose of marketing them.

H. "Board" means Red Tart and Sour Cherry Marketing Board.

R65-5-3. Board.

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

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Three grower members and one processor member shall be appointed for a term of four years. Two grower members and one processor member shall be appointed for four years.

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

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

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

F. All decisions of the Board of Control shall be by majority vote.

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

R65-5-4. Provisions of the Order.

A. This order shall provide for:

1. Uniform grading Red Tart and Sour cherries for fresh or frozen markets, sold or offered for sale by producers or processors. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

2. Advertising and sales promotion to create new or larger markets for cherries grown in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without any reference to a particular brand or trade name. Provided further, that no advertising or sales promotion program shall be authorized which shall make use of false or unwarranted claims in behalf of the product covered by this Order, or disparage the quality, value, sale or use of any other agricultural commodity to supply the market demands of consumers of such commodity.

3. Labeling, marketing, or branding of cherries which does not conflict with any rules of the Commissioner or laws of the State of Utah.

4. The Board of Control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of the Order.

B. Expenses-Assessments-Collections and Disbursement.

1. Each producer or processor subject to this Order shall pay to the Board his or her pro rata share (as approved by the Commissioner) of such expenses as the Board may find necessary to be incurred for the functioning of said Marketing Order. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers or processors. The Board may maintain in its own name, or in the name of its members, a suit against any producer, or processor subject to this Order, for the collection of such producer's pro rata share of expenses.

2. This assessment shall be determined to be up to $10.00 per ton for Red Tart and Sour cherries. The discretionary assessment shall be set by majority vote of the board, as approved by the Commissioner. The assessment is effective May 1, 1983.

3. The assessment of each producer shall be deducted from the producer's gross receipt of Red Tart and Sour cherries by the producer-processor. All proceeds from the deducted portion shall be paid annually to the Board on or before October 1, for that crop year.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request. The Board shall issue an annual financial statement to the Commissioner showing receipts and reimbursement. This statement shall be made available to any contributor upon request.

5. The Board is required to reimburse the Commissioner for any funds as are expended by him in performing his duties as provided in this Order. Such reimbursement shall include only funds actually expended in connection with this Order.

6. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-5-5.

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

R65-5-5. Division of Funds.

Assessment made and monies collected under provisions of this order shall be divided into assessments and funds for

administrative, advertising and research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that no funds be used for political or lobbying activities.

R65-5-6. Complaints for Violation - Procedure.

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

R65-5-7. Termination of Order.

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

KEY: promotions
1989 **4-2-2(1)(e)**
Notice of Continuation February 15, 2008

R68. Agriculture and Food, Plant Industry.
R68-5. Grain Inspection.
R68-5-1. Authority.

Promulgated under authority of Section 4-2-2(2).

R68-5-2. Grain Inspection Fees.

Fees shall be charged for the inspection and grading services as determined by the department pursuant to 4-2-2(2). A current list of approved fees may be obtained, upon request from the department:

A. Location:

Utah Department of Agriculture and Food
Grain Inspection
P.O. Box 1519 - 128 17th Street
Ogden, UT 84402
Phone (801) 392-2292

B. Hours. Regular working hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

C. Days Not Worked. Saturdays, Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Holidays are considered overtime hours.

R68-5-3. Utah Standards For Safflower.

A. Safflower (carthamus tinctorius), for purposes of this rule, shall be construed to include all types and varieties of Safflower.

B. Moisture. The moisture, or water content in Safflower shall be tested in the following manner:

1. Basis of determination.

A moisture determination shall be made on a representative portion from the representative sample, before the removal of foreign material or dockage, by testing exactly the amount of 225 grams of safflower seed product.

2. Certification.

The percentages of moisture content shall be reported on the pan-ticket and the Utah Department of Agriculture and Food-Grain Inspection Certificate, and shall be expressed in whole and tenths of a percent, rounded to the nearest tenth percent.

C. Dockage.

All matter other than whole Safflower Seed which can be removed from a test portion of the original sample, shall be removed by the use of an approved device, and also by handpicking a portion of the machine-cleaned sample to remove all remaining material other than Safflower and other grains.

1. Basis of determination.

A dockage determination test shall be made using approximately 750-850 grams or 1 1/8 to 1 1/2 quarts cut from the original sample.

a. The person making the test shall first determine the mechanically separated dockage. This involves a separation procedure using a Carter Dockage Tester.

b. An arbitrarily handpicked portion of approximately 75 grams shall be cut from the mechanically cleaned Safflower Seed.

2. The following process shall be used to determine dockage with the Carter Dockage Tester.

a. The air control shall be set at number 9 (wide open).

b. The feed control shall be set at number 6.

c. In the Riddle Carriage, the plastic seed riddle, part number 35898, shall be used.

d. A number 2 sieve shall be used in the top sieve carriage.

e. If there is a sieve in the middle or the bottom sieve carriage, it shall NOT be used.

3. Dockage will consist of:

a. Any material removed by the aspirator (air collecting pan).

b. Coarse material, except whole Safflower Seed that passed over the riddle (riddle collecting pan). Whole kernels of Safflower Seed that passed over the riddle shall be returned to the cleaned sample.

c. Any material that passed through the number 2 sieve (bottom collecting pan).

d. Any material other than Safflower seed and other grains removed by handpicking a machine cleaned portion of approximately 75 grams.

4. Certification.

The percentage of dockage shall be reported on the pan ticket and the Utah Department of Agriculture and Food-Grain Inspection Certificate. The percent of dockage shall be stated in terms of whole or half percentages.

D. Test weight per bushel.

1. Basis of determination.

A test weight per bushel shall be performed on a representative portion ranging in size from 1 to 1 1/2 quarts or 750-850 grams after the removal of the mechanically separated dockage.

2. Certification.

The test weight per bushel shall be reported on the sample pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate in whole and half pounds.

E. Hulls.

Hulls shall have less than 1 third (1/3) of the kernels attached.

1. Basis of determination.

A determination for testing the percentage of kernels attached to hulls shall be performed using approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of kernels attached to hulls shall be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate, and shall be expressed to the nearest tenth percent.

F. Dehulled kernels and broken seed.

Dehulled kernels and broken seed shall consist of Safflower or pieces of seed in which the hull has been completely removed from Safflower Seed that have 1 third (1/3) or more of the kernels attached, and also in cases of Safflower seeds that have been so broken that the kernel has been exposed.

1. Basis of determination.

A determination of dehulled and broken seed will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

2. Certification.

The percentage of dehulled and broken seed will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

G. Other grains.

Other grains shall consist of any other grain or domestic kernels which are not removed in the dockage.

1. Basis of determination.

A test to determine the percentage of other grains present in the product, will be performed on approximately 30 grams cut from the work sample after the removal of dockage.

2. Certification.

The percentage of other grains will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

H. Damaged and heat-damaged Safflower Seed.

Amounts of damaged Safflower total kernels and pieces of kernels that are heat damaged, sprout damaged, frost damaged, green or otherwise materially damaged shall be assessed. Heat damaged means Safflower kernels and pieces of kernels that have been materially discolored and damaged by heat.

1. Basis of determination.

A test to determine the percentage of damaged and heat damaged Safflower kernels will be performed using approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of heat damaged Safflower Seed and damaged Safflower Seed (total) shall be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate, and shown to the nearest tenth percent.

I. Split damage.

A check for split damage in Safflower Seed shall be conducted noting any break, fissure, crack, or tear in the seed kernels, husk or cover.

1. Basis of determination.

A test to determine the percent of split, damaged Safflower kernels will be performed on approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of split damaged Safflower seeds shall be reported in the split section and included in the damaged Safflower section on the Utah Department of Agriculture-Grain Inspection Certificate, and shown to the nearest tenth percent.

J. Safflower Seed claiming a UTAH grade shall meet the requirements in the following table:

TABLE

Utah Safflower Seed Grade Requirements

Grade	Utah 1	Utah 2	Utah 3	Sample Grade
Minimum Limit				
Test wt. Per bushel	40.0 lbs	38.0 lbs	35.0 lbs	*
Maximum Limit				
Stones (per 100 grams)	2	6	6	*
Hulls	1	2	5	*
Dehulled Kernels and Broken Seed	2	4	8	*
Splits	2	5	8	*
Other Grains	0.5	2	3	*
Damaged Safflower Seeds				
Sprout	1	2	4	*
Heat	0.0	0.2	1	*
Total	3	5	5	*

*Sample grade Safflower shall consist of a Safflower-seed group which:

i. Does not meet the requirements for grade Utah 1 through Utah 3, or

ii. In approximately a 750-850 gram sample, contains 7 or more stones, or

iii. Has a musty, sour or commercially objectionable foreign odor, or

iv. Contains more than 2.5% of earth pellets after the mechanical separation of dockage.

NOTE: 1. Slightly or badly weather stained Safflower Seed may not be rated higher than grade Utah 2 or Utah 3 for purposes of inspection under this rule.

KEY: inspections
December 16, 1997 **4-2-2(2)**
Notice of Continuation February 15, 2008

R131. Capitol Preservation Board (State), Administration.
R131-1. Procurement of Architectural and Engineering Services.
R131-1-1. Purpose and Authority.

(1) As provided by Subsection 63-56-14(1), this rule establishes procedures for the procurement of architectural and engineering services by the State Capitol Preservation Board.

(2) The Board's authority to adopt rules is provided according to Subsection 63C-9-301(3).

(3) As required by Subsection 63C-9-301(4), procurement of architectural and engineering services shall be conducted in accordance with this rule, the provisions of Title 63, Chapter 56, or of Title 63A, Chapter 5 as determined by the Board.

R131-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63-56-5.

(2) In addition:

(a) "Executive Director" means the Executive Director of the Capitol Preservation Board or authorized designee.

(b) "Office" means the staff and facilities of the executive-director to the Board pursuant to Sections 63C-9-401, and 402.

(c) "Record" shall have the same meaning as defined in Section 63-2-103 of the Government Records Access and Management Act (GRAMA).

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

R131-1-3. Maintaining a Register of Architectural/Engineering Firms.

The Board shall select registered and licensed architects and engineers that are interested in being considered for state building projects, from the DFCM register/list, prepared in accordance with Section R23-2-3, Utah Administrative Code.

R131-1-4. Notification of Need for Architectural/Engineering Services.

(1) The Board shall publish or cause to have published its needs for architectural/engineering services in the manner provided in Subsection R23-1-5(2). The public notice shall include the following:

(a) The closing time and date for the submission of Statement of Qualifications;

(b) The address of the office to which Statements of Qualifications are to be delivered;

(c) The address where a more complete project description may be obtained;

(d) A brief description of the project; and

(e) A notice of any mandatory pre-submittal meetings.

(2) The architects/engineers shall respond with a Statement of Qualifications for each project.

R131-1-5. Appointment of a Selection Committee.

The Executive Director shall appoint a selection committee to review all applications of interested architectural/engineering firms. The committee shall include representatives of the Board, the Office, the State Building Board, and others as deemed appropriate.

R131-1-6. Preliminary Screening and Evaluation.

(1) The selection committee shall independently rate each interested firm. A weighted point system shall be used. A ranking of those qualified firms shall be made by using a composite scoring of all the individual rater's scores.

(2) The following criteria shall be used in the evaluation and ranking of firms for possible awards:

(a) Competence to perform the services as reflected by technical training and education, specialized experience in providing similar services, and the qualifications and competence of persons who would be assigned to assist with the performance of the services;

(b) Capacity to perform the services in the required time as reflected by present workload, availability of adequate personnel, equipment, and facilities;

(c) Past performance as reflected by the evaluation of the services of the architect/engineer; including such factors as control of costs, quality of work, and ability to meet deadlines; and

(d) Proximity of firm to the project.

R131-1-7. Interviews with Architectural/Engineering Firms.

(1) For all projects, interviews shall be held with no less than the top three ranked firms competing for the project design commission. The number of firms interviewed per project may vary according to the size and complexity of the project. Multiple interviews may be held on smaller projects at the discretion of the Executive Director.

(2) Firms selected to be interviewed shall be provided with as much pertinent information as possible of the job at least one week prior to the interview.

(3) After composite rankings or interviews are completed, the selection committee shall select the top three and rank them in order of selection.

R131-1-8. Negotiation and Appointment.

(1) The Executive Director shall negotiate with the top-ranked architectural or engineering firm to finalize the details of the project. If there are problems with reaching agreement, the Executive Director shall present a written offer of the terms which must then be accepted or rejected in writing by the architectural/engineering firm. If the offer is rejected by the top-ranked firm, the Executive Director may negotiate with the second-ranked firm to obtain an agreement. If negotiations with the second-ranked firm are not able to be successfully concluded, the Office may negotiate with the third-ranked firm.

(2) Following completion of negotiations, the Executive Director will present the choice of the selected firm to the Board for approval, to enter into a contract with the selected firm. Upon Board approval, the Executive Director will enter into a contract with the selected firm. Other firms who were interviewed shall receive notification of award.

R131-1-9. Role of the Board.

(1) The Executive Director shall establish and monitor the selection process, may take appropriate steps to verify the acceptability of the procedure, and make changes in procedure at any time as may be determined necessary by the Board.

(2) At each meeting of the Board, the Executive Director shall submit a list of all architect/engineer contracts entered into, and a description of the method(s) of selection used to the Board as a second review of actions taken.

R131-1-10. Disclosure of Submittals, Performance Evaluations, References and Award.

(1) After the date established for the first submittal of information, a register of submitting architects and engineers shall be prepared and open to public inspection. Prior to award, submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process who shall adhere to the requirements of GRAMA and this rule.

(2) The Executive Director shall, throughout the course of, and at the end of the contract, evaluate the performance of the architectural/engineering firm; verbally and in writing. There shall be at least one verbal review of the architectural/engineering firm's performance on each project, prior to the project's completion. The Executive Director shall also advise the architectural/engineering firm, in writing, about their performance at the end of the project. If the firm wishes to respond to those evaluation(s), it may enter its response(s) in the

file.

(3) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

(4) The classification of records as protected and the treatment of such records shall be as provided in Section R131-4-411.5.

(5) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63-2-304(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect-engineer that the information addresses and persons involved with the review and selection of submittals. The Board or Executive Director may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect-engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

(6) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Executive Director in Salt Lake City, Utah and may be available on the Internet.

(7) Information Disclosed. The following shall be disclosed with the notice of selection:

(a) the ranking of the firms;

(b) the names of the selection committee members;

(c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and

(d) the written justification statement supporting the selection.

(8) Information Classified as Protected. After due consideration, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Board or Executive Director and shall be classified as protected records:

(a) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(b) non-public financial statements.

R131-1-11. Emergency Conditions.

The Executive Director, in consultation with the chairman of the Board, shall determine if it is necessary to respond to any emergency conditions that may occur. He shall also document his decision to take emergency action in writing. The Executive Director may use any reasonable method of awarding architect/engineer design contracts when emergency conditions occur. If the Executive Director determines that a particular specialization is needed, he may appoint any firm(s) he finds may be necessary to accomplish work on the emergency project design.

R131-1-12. Direct Awards.

(1) The Executive Director may award a contract to an architectural/engineering firm without following the procedures of this rule if:

(a) The contract is for a project which is integrally related to, or an extension of, a project which was awarded to the architectural/engineering firm;

(b) The architectural/engineering firm performed satisfactorily on any similar or related project; and

(c) The Executive Director determines that the direct award is in the best interests of the State.

(2) The Executive Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R131-1-13. Small Purchases.

(1) If the Executive Director determines that the services of architects and engineers can be procured for less than $50,000, or if the estimated construction cost of the project is less than $500,000, the procedures contained in Subsection (2) below, may be used.

(2) Before contacting any person to perform the required services, the Executive Director may refer to or examine any current statements of qualifications on file with the Office. Following that, the Executive Director may contact a qualified firm and negotiate a contract for the required services at a fair and reasonable price. If no current statements of qualifications are on file or if the statements on file are, in the judgment of the Executive Director, inadequate to determine a qualified firm, technical proposals or statements of qualifications shall be solicited. If, after negotiations, the parties cannot agree upon a price that, in the Executive Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated that reflects a fair and reasonable price and meets the necessary conditions of the project.

R131-1-14. Performance Evaluations.

(1) The Executive Director shall evaluate the performance of the architectural/engineering firm.

(2) This evaluation shall become a part of the record of that architectural/engineering firm with the Board and the State. The architectural/engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R131-1-10(5).

R131-1-15. Alternative Procedures.

(1) The Board may revise or enhance the procurement process whenever the Executive Director determines that it would be in the best interest of the State. Examples of enhancements or changes which may be made include design competitions and outside representation on selection committees.

(2) Any exceptions to this rule shall be justified to and approved by the Board.

KEY: architects, capitol-preservation, engineers, procurement
February 29, 2008 63C-9-101 et seq.
Notice of Continuation February 16, 2005

R131. Capitol Preservation Board (State), Administration.
R131-4. Capitol Preservation Board General Procurement Rule.
R131-4-101. Purpose.

The underlying purposes and policies of R131-4 are:

(1) to comply with the Capitol Preservation Board statute which requires the board to adopt rules that are substantially similar to the requirements of the Utah Procurement Code, Title 63, Chapter 56;

(2) to ensure the fair and equitable treatment of all persons who deal with the Capitol Preservation Board;

(3) to provide increased economy in Capitol Preservation Board procurement activities; and

(4) to foster effective broad-based competition within the free enterprise system.

R131-4-102. Application of this Rule.

(1) R131-4 applies only to contracts solicited or entered into after the effective date of this rule unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in R131-4-103, this rule shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by the Capitol Preservation Board under any contract.

(3) Unless otherwise provided by statute, R131-4 does not apply to procurement of real property.

R131-4-103. Exemptions from this Rule.

(1) R131-4 is not applicable to funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act.

(2) R131-4 is not applicable to grants awarded by the state or contracts between the state and local public procurement units except as provided in R131-4-901, Intergovernmental Relations.

(3) R131-4 shall not prevent the Capitol Preservation Board from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(4) When a procurement involves the expenditure of federal assistance or contract funds, the chief procurement officer, executive director of the Capitol Preservation Board, shall comply with mandatory applicable federal law and regulations not reflected in R131-4.

(5) R131-4 may not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

R131-4-104. Records.

(1) All procurement records shall be retained and disposed of in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by R131-4 shall also be retained in the appropriate official contract file of the Division of Purchasing and General Services or the Capitol Preservation Board.

R131-4-105. Definitions.

As used in R131-4:

(1) "Acceptable bid security" means a bid bond which meets the requirements of this rule.

(2) "Architect-engineer services" are those professional services within the scope of the practice of architecture as defined in Section 58-3a-102, or professional engineering as defined in Section 58-22-102.

(3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(4) "Board" means the state of Utah Capitol Preservation Board created under Title 63C, Chapter 9.

(5) "Change order" means a written order signed by the executive director or duly appointed designee, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the executive director to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. The executive director or duly appointed designee may also issue a construction change directive changing the scope and/or time of the contract which shall become a change order once either agreed to by the contractor or not objected to by the contractor by submission to the executive director of such objection in writing within 21 days of the delivery of the construction change directive to the contractor.

(6)(a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work.

(b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(7)(a) "Construction manager/general contractor" means any contractor who enters into a contract for the management of a construction project when that contract allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services.

(b) "Construction manager/general contractor" does not mean a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of construction is to meet subcontracted portions of change orders approved within the scope of the project.

(8) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(9) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

(10) "Cost data" means factual information concerning details; including expected monetary values for labor, material, overhead, and other pricing components which the contractor has included, or will include as part of performing the contract.

(11) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this rule, and a fee, if any.

(12)(a) "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

(b) This method of design and construction can include the design-build provider supplying the site as part of the contract.

(13) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(14) "Executive director" means the executive director of the board.

(15) "External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

(16) "Grant" means the furnishing by the state or by any other public or private source assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from the award is not a grant but a procurement contract.

(17) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(18) "Local public procurement unit" means any political subdivision or institution of higher education of the state or public agency of any subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties, municipalities, political subdivisions created by counties or municipalities under the Interlocal Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

(19) "Person" means any business, individual, union, committee, club, other organization, or group of individuals, not including a state agency or a local public procurement unit.

(20) "Policy board" means the Budget Development and Board Operations Subcommittee of the board to act as the procurement policy board as referred to in the Utah Procurement Code, Title 63, Chapter 56.

(21) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this rule.

(22) "Price data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.

(23) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

(24) "Procurement officer" means the executive director duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority as provided by the board or designated by the executive director.

(25) "Procuring agencies" means, individually or collectively, the state, the board, the owner and a using agency, if any.

(26) "Products" means and includes materials, systems and equipment that are components of a construction project.

(27) "Proprietary specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements.

(28) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(29) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

(30) "Purchasing agency" means any state agency other than the board that is authorized by R131-4, or by delegation from the executive director, to enter into contracts.

(31) "Record" shall have the meaning defined in Section 63-2-103 of the Governmental Records Access and Management Act (GRAMA).

(32) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(33) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

(34) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(35) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(36) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

(37) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(38) "State" means the state of Utah.

(39) "State agency" or "the state" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment, official or employee of this state.

(40) "State public procurement unit" means the board, Division of Purchasing and General Services and any other puchasing agency of this state.

(41) "Subcontractor" means any person who has a contract with any person other than the procuring agency (board or executive director) to perform any portion of the work on a project.

(42) "Supplies" means all property, including equipment, materials, and printing.

(43) "Using agency" means any state agency which utilizes any supplies, services, or construction procured under this rule.

(44) "Work" means the furnishing of labor or materials, or both.

R131-4-201. Procurement Policy.

Procurement policy powers and duties under R131-4-202 below shall be performed by the Budget Development and Board Operations Subcommittee of the board as created in Title 63C, Chapter 9. Any procurement policy determinations of the subcommittee shall be brought to the board for final approval.

R131-4-202. Powers and Duties of the Budget Development and Board Operations Subcommittee in Regard to Procurement Policies.

(1) Except as otherwise provided in R131-4-102, the Budget Development and Board Operations Subcommittee shall:

(a) make procurement rule recommendations to the board that are substantially similar to the requirements of Title 63, Chapter 56, Utah Procurement Code or facilitate the implementation of such requirements, governing the procurement, management, and control of any and all supplies, services, and construction to be procured by the board; and

(b) consider and recommend to the board, matters of policy within the provisions of R131-4, including those referred to it by the executive director.

(2)(a) The subcommittee may:

(i) audit and monitor the implementation of the board's rules and the requirements of the Utah Procurement Code and R131-4;

(ii) approve the use of innovative procurement methods proposed by the executive director.

(b) Except as otherwise provided in this rule or as duly authorized by the board, the subcommittee may not exercise authority over the award or administration of

(i) any particular contact; or

(ii) over any dispute, claim, or litigation pertaining to any particular contract.

(3) After receiving the recommendations from the Budget Development and Board Operations Subcommittee, the board shall review the recommendations, and shall make a determination on the recommendations, including the commencement of the rulemaking process.

R131-4-203. Chief Procurement Officer.

The executive director of the board shall be the chief procurement officer.

R131-4-204. Duties of Chief Procurement Officer.

Except as otherwise specifically provided in R131-4, the chief procurement officer serves as the central procurement officer for the board and shall:

(1) adopt office policies governing the internal functions of the staff for the board;

(2) procure or supervise the procurement of all supplies, services, and construction needed by the board;

(3) exercise general supervision and control over all inventories or supplies belonging to the board;

(4) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction; and

(5) prepare statistical data concerning the procurement and usage of all supplies, services, and construction.

R131-4-205. Delegation of Authority.

The executive director may delegate authority to a designated staff person(s) of the board.

R131-4-206. Specific Statutory Authority.

As stated in Section 63-56-207:

(1) The authority to procure certain supplies, services, and construction given the public procurement units governed by the following provisions shall be retained:

(a) Title 53B, State System of Higher Education;

(b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;

(c) Title 67, Chapter 5, Attorney General;

(d) Title 72, Transportation; and

(e) Title 78, Chapter 3, District Courts.

(2) This authority extends only to supplies, services, and construction to the extent provided in the cited chapters.

(3)(a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.

(b) This Subsection (3) supersedes Subsections (1) and (2) above.

(4) The legislature may procure supplies and services for its own needs.

R131-4-301. Rules and Regulations for Specifications of Supplies.

R131-4 shall govern the preparation, maintenance, and content of specifications for supplies, services, and construction required by the board. R131-4 shall determine the extent to which a nonemployee who has prepared specifications for use by the board may participate in any board procurement using such specifications.

R131-4-302. Duty of Executive Director in Maintaining Specifications.

The executive director shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the board.

R131-4-303. Purpose of Specifications.

All specifications shall seek to promote overall best quality economy and best use for the purposes intended and encourage competition in satisfying the state's needs, and shall not be unduly restrictive. The requirements of R131-4-301 through R131-4-304 regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

R131-4-304. Additional Specification Requirements.

(1) General provisions.

(a) Preference for Commercially Available Products. Recognized, commercially-available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided where practicable.

(b) Nonrestrictiveness Requirements. All specifications shall describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will meet the need. If needed, a written determination shall justify the use of restrictive specifications over non-restrictive specifications.

(2) Executive Director's Responsibilities.

(a) The executive director shall prepare all project specifications, or

(b) The board may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. In the latter instance, the executive director shall retain the authority to approve all specifications.

(c) Whenever specifications are prepared by persons other than the board and executive director's staff, the contract for the preparation of specifications shall adhere to the requirements of this rule.

(3) Types of Specifications. The executive director may use any method of specifying construction items, including:

(a) a performance specification stating the results to be achieved with the contractor choosing the means; or

(b) a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications shall include the following:

(i) Descriptive specifications, providing detailed written descriptions of the required properties of products, or the workmanship required to fabricate, erect and install without using trade names; or

(ii) Proprietary specifications, identifying desired products by using manufacturers, brand names, model or type designation or important characteristics. This shall consist of:

(A) Base bid, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there are only definite proprietary products known that will meet the rigid standards needed; and

(B) Or equal, which allows substitutions if properly approved;

(c) a reference standard specification where documents or publications are incorporated by reference as though they were included in their entirety; or

(d) a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other

characteristics or considerations to be satisfied.

(4) Procedures for the Development of Specifications.

(a) Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.

(b) Specifications shall contain a nontechnical section to include any solicitation or contract terms or conditions such as requirements for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.

(c) Use of Proprietary Specifications.

(i) The executive director shall designate one or more brands as a standard reference and shall state that substantially equivalent products will be considered for award, with particular conditions of approval being described in the specification.

(ii) Unless the executive director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(iii) Where a proprietary specification is used, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(iv) The board shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with this rule.

R131-4-401. Contracts Awarded by Sealed Bidding - Procedure.

(1) In General. Competitive sealed bidding, which includes multi-step sealed bidding, shall be an allowable method for the procurement of construction when a single prime contractor is used. Other methods may be considered for procurement of construction when the executive director determines that it best meets the needs for the project. For all other goods, supplies and services, contracts shall be awarded by competitive sealed bidding expect as otherwise provided in R131-4. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(2) Public Notice of Invitations for Bids.

(a) Public notice of invitations for bids shall be publicized electronically on the Internet, and may be publicized in any or all of the following as determined appropriate:

(i) In a newspaper having general circulation in the area in which the project is located;

(ii) In appropriate trade publications;

(iii) In a newspaper having general circulation in the state; or

(iv) By any other method determined appropriate.

(b) A copy of the public notice shall be available for public inspection at the principal office of the board in Salt Lake City, Utah.

(3) Content of the Public Notice to Contractors for Invitation For Bids. The public notice to contractors for invitation for bids (herein referred to as the "Notice") shall include the following:

(a) The closing time and date for the submission of bids;

(b) The location to which bids are to be delivered;

(c) Directions for obtaining the bidding documents;

(d) A brief description of the project; and

(e) Notice of any mandatory pre-bid meetings.

(4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the executive director. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the executive director.

(5) Bid Prices. The bidding documents for an invitation for bids shall include a bid price form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials and may include qualification requirements as appropriate.

(6) Addenda to the Bidding Documents.

(a) Addenda shall be distributed or otherwise made available to all entities known to have obtained bidding documents for a project.

(b) Addenda shall be distributed within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda. The person responsible for the issuance of bidding documents shall confirm in writing, any addenda communicated to bidders by telephone.

(7) Pre-Opening Modification or Withdrawal of Bids.

(a) Bids may be modified or withdrawn by the bidder by written notice delivered to the place designated in the notice when bids are to be delivered prior to the time set for the opening of bids.

(b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate project file.

(8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the place designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.

(9) Receipt, Opening, and Recording of Bids.

(a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The names of the bidders, the bid price, and other information deemed appropriate by the executive director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made, including the amount of each bid. The record (bid tabulation) and opened bids shall be available for public inspection.

(10) Mistakes in Bids.

(a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only at the discretion of the executive director and only to the extent it is not contrary to the interest of the board or the fair treatment of other bidders.

(b) When it appears from a review of the bid that a mistake may have been made, the executive director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid lower than the other bids submitted that appears to have neglected some part of the project.

(c) Mistakes at Bid Opening. The executive director shall weigh the types of factors described below in which mistakes in bids are discovered after opening but before award. After the

bid opening, no changes in the bid prices or other provisions of bids prejudicial to the interest of the board or fair competition may be permitted. These include:

(i) Minor formalities are matters which, in the discretion of the board or executive director, are found to be of form rather than substance evident from the bid document, or are insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the executive director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The executive director, in the executive director's sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the board. Examples include the failure of a bidder to:

(A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(B) Acknowledge receipt of any addenda to the invitation for bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.

(ii) A determination by the executive director that the mistake and the intended bid are clearly evident on the face of the bid document. The bid shall be corrected to reflect the intent of the bidder, and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Approval to withdraw a low bid if the executive director determines a mistake is clearly evident on the face of the bid document but the intended amount of the bid is not similarly evident, or if the bidder submits to the executive director proof of evidentiary value which, in the executive director's best judgment, demonstrates that a mistake in calculation or estimation was made.

(d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in R131-4-401 may be corrected or the award of the contract canceled if the executive director determines that correction or cancellation will not prejudice the interests of the board or fair competition.

(e) The executive director shall approve or deny in writing all requests to correct or withdraw a bid.

(11) Bid Evaluation and Award. Except as provided below, the contract may be awarded to the lowest qualified responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids and no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63-56-405 are met. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable. The criteria may include discounts, transportation costs, and total or life cycle costs.

(12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

(a) Although issuance of an invitation for bids does not compel award of a contract, the executive director may cancel an invitation for bids or reject bids received in whole or in part only when the executive director determines that it is in the best interests of the board to do so.

(b) The reasons for cancellation or rejection shall be documented and made a part of the project file and available for public inspection.

(c) Any determination of nonresponsibility of a bidder shall be made by the executive director in writing. An unreasonable failure of the bidder to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility, therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63-2-304 and may be disclosed only as provided for in R131-4-411A.

(13)(a) All bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the executive director may, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(b) Notwithstanding Subsection (13)(a), if all bids exceed the construction budget by any amount, the executive director may take any action allowed by this rule to award the contract to the lowest responsible and responsive bidder that will complete the construction project within the amount of available funds.

(c) This rule does not restrict in any way, the right of the executive director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

(14) Tie Bids. Tie bids shall be resolved in accordance with Section 63-56-426.

(15) Subcontractor Lists. The executive director may provide for subcontractor list requirements in the invitation for bids.

(a) Pursuant to Section 63-2-304, information contained in the subcontractor list submitted to the board or executive director shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(b) Change of Listed Subcontractors. If the executive director requires the submission of a subcontractor list with a deadline, the contractor may change his submitted listed subcontractors only after receiving written permission from the executive director based on complying with all of the following:

(i) The contractor has established in writing that the change is in the best interest of the state and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, or the subcontractor has requested in writing to be released;

(ii) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(iii) Any requirement set forth by the executive director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(iv) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(v) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R131-4-401A. Multi-Step Sealed Bidding.

(1) When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers (statement of qualifications) to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(2) Description. Multi-step sealed bidding is a two-phase process. In the first phase, bidders shall submit a statement of qualifications to be evaluated. In the second phase, bidders whose statement of qualifications are determined to be acceptable during the first phase shall be invited to submit price bids.

(3) Use. Multi-step sealed bidding may be used when the executive director deems it to be in the interest of the state.

(4) Procedure for First Phase. The first phase shall be processed in accordance with the notice, substance and procedural requirements of a request for proposal under R131-4-408.

(5) The second phase shall be processed in accordance with the applicable substance and procedural requirements of a competitive sealed bid under R131-4-401. No public notice will be provided for this invitation.

R131-4-402. Contracts Awarded by Reverse Auction.

(1) As used in this Section, "reverse auction" means a process where:

(a) contracts are awarded in an open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Notwithstanding the requirements of this rule, contracts may be awarded through a reverse auction.

(3) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit a statement of qualifications to be evaluated against the established criteria by the executive director, and a second phase in which those bidders whose statement of qualifications are determined to be acceptable during the first phase submit their price bids through a reverse auction.

(4) Use. The reverse auction method will be used when the executive director deems it to the advantage of the board.

(5) Pre-Bid Conferences in Reverse Auctions. Prior to the submission of a statement of qualifications, a pre-bid conference may be conducted by the executive director. The executive director may also hold a conference of all bidders at any time during the evaluation of the statement of qualifications, or to explain the reverse auction process.

(6) Procedure for Phase One of Reverse Auctions.

(a) Form. A reverse auction shall be initiated by the issuance of an invitation for bids in the form required by R131-4-401. In addition to those requirements, the reverse auction invitation for bids shall state:

(i) that a statement of qualifications are requested;

(ii) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose statement of qualifications are found acceptable in the first phase;

(iii) the criteria to be used in the evaluation of the statement of qualifications;

(iv) that the board or executive director, to the extent the executive director finds necessary, may conduct oral or written discussions of the statement of qualifications;

(v) that bidders may designate those portions of the statement of qualifications which contain trade secrets or other proprietary data which are to remain confidential to the extent provided by law; and

(vi) the manner in which the second phase reverse auction will be conducted.

(7) Amendments to the Invitation for Bids. After receipt of the statement of qualifications, amendments to the invitation for bids shall be distributed only to bidders who submitted a statement of qualifications and they shall be allowed to submit new statements of qualifications or to amend those submitted. If, in the opinion of the executive director, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids shall be canceled in accordance with R131-4-401 and a new invitation for bids issued.

(8) Receipt and Handling of Statement of Qualifications. Statement of qualifications shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, statement of qualifications shall remain confidential and shall be available only to board personnel and those involved in the selection process having a legitimate interest in them.

(9) Non-Disclosure of Proprietary Data. Bidders may request protection of records in accordance with R131-4-411A.

(10)(a) Evaluation of Statement of Qualifications. The statement of qualifications submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The statement of qualifications shall be categorized as:

(i) acceptable;

(ii) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(iii) unacceptable.

(b) The executive director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(c) The executive director may initiate phase two of the procedure if, in the executive director's opinion, there are sufficient acceptable statements of qualifications to assure effective price competition in the second phase without modification or alteration of the offers. If the executive director finds that this is not the case, the executive director shall issue an amendment to the invitation for bids or engage in technical discussions as set forth in R131-4-402(11) below.

(11) Discussion of Statement of Qualifications. Discussion of the statement of qualifications may be conducted by the executive director with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During the course of these discussions, the executive director shall not disclose any information derived from one statement of qualifications offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its statement of qualifications has been finally found unacceptable may submit supplemental information modifying or otherwise amending its statement of qualifications offer at any time until the closing date established by the executive director. This submission may be made at the request of the executive director or upon the bidder's own initiative.

(12) Notice of Unacceptable Statement of Qualifications. When the executive director determines a bidder's statement of qualifications is unacceptable, the executive director shall notify the bidder. After this notification, the bidder shall not be

afforded an additional opportunity to modify their statement of qualifications.

(13) Carrying Out Phase Two of Reverse Auctions.

(a) Upon the completion of phase one, the executive director shall invite those qualified bidders to participate in phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given the opportunity to submit revised, lower bids, until the bidding process is closed.

(b) The invitation for bids shall:

(i) establish a date and time for the beginning of phase two;

(ii) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.

(c) Following receipt of the first bid after the beginning of phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.

(i) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.

(ii) Bid prices may not be increased after the beginning of phase two.

(14) Mistakes During Reverse Auctions.

(a) Mistakes may be corrected or bids may be withdrawn during phase one:

(i) before statements of qualifications are considered;

(ii) after any discussions have commenced under the procedure for phase one of reverse auctions, discussion of statement of qualifications; or

(iii) when responding to any amendment of the invitation for bids. Otherwise, mistakes may be corrected or withdrawal permitted in accordance with R131-4-401(10).

(15) A phase two bid may be withdrawn only in accordance with R131-4-401(10). If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the executive director may cancel the solicitation or reopen phase two bidding to all bidders deemed qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.

R131-4-403. Procurement - Use of Recycled Goods.

The executive director shall:

(1) comply with Section 63-56-406 regarding recycled paper and paper products; and

(2)(a) use for reference, the current listing of recycled items available on state contract as issued by the State Division of Purchasing and General Services under Section 63-56-204; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

R131-4-404. Preference for Providers of State Products.

(1)(a) All board procurement shall, in all purchases of goods, supplies, equipment, materials, and printing, give a reciprocal preference to those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah as against those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular good, supply, equipment, material, or printing.

(c)(i) The bidder shall certify on the bid that the goods, supplies, equipment, materials, or printing offered are produced, manufactured, mined, grown, or performed in Utah.

(ii) The reciprocal preference is waived if that certification does not appear on the bid or the product, quality or services is not available from within the state of Utah.

(2)(a) If the bidder submitting the lowest responsive and responsible bid offers goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, his bid is equal to or less than the original lowest bid, the executive director shall:

(i) give notice to the bidder offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah that he qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if, within 72 hours after notification to him that he is a preferred bidder, he agrees, in writing, to meet the low bid.

(b) The executive director shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred bidder.

(c) The executive director may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3)(a) If there is more than one preferred bidder, the executive director shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the executive director shall resolve the tie in accordance with Section 63-56-426.

(4) The provisions of R131-4-404 do not apply if such application might jeopardize the receipt of federal funds.

R131-4-405. Preference for Resident Contractors.

(1) As used in this Section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2)(a) When awarding contracts for construction, the board shall grant a resident contractor a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3)(a) The bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if that certification does not appear on the bid or if the resident contractor is not qualified to perform the work as stipulated in the pre-proposal or pre-bid documents.

(4)(a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor and has its principal place of business in any state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the executive director shall:

(i) give notice to the resident contractor that the contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if, within 72 hours after notification to the contractor that such contractor

is a preferred resident contractor, the contractor agrees, in writing, to meet the low bid.

(b) The executive director shall include the exact price submitted by the lowest bidder in the notice submitted to the preferred resident contractor.

(c) The executive director may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5)(a) If there is more than one preferred resident contractor, the executive director shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the executive director shall resolve the tie in accordance with Section 63-56-426.

(6) The provisions of R131-4-405 do not apply if such application might jeopardize the receipt of federal funds.

R131-4-407. Use of Alkaline Paper.

The Board and executive director shall comply with Section 63-56-407 regarding the use of Alkaline Paper.

R131-4-408. Use of Competitive Sealed Proposals in lieu of Bids - Procedure.

(1) Considerations for Use. Competitive sealed proposals, which shall be solicited through a request for proposals, may be used, if:

(a) there may be a need for price and service negotiation;

(b) there may be a need for negotiation during performance of the contract;

(c) the relative skills or expertise of the offerors should be evaluated;

(d) characteristics of the product or service sought is important; or

(e) the conditions of the service, product or delivery conditions are unable to be sufficiently described in the invitation for bids.

(2) Determinations.

(a) Before a contract may be entered into by competitive sealed proposals, the executive director shall determine in writing that the use of competitive sealed proposals is more advantageous for state purposes than competitive sealed bidding.

(b) Determinations may be by category of service or construction items. The executive director may modify or revoke a determination and may review previous determinations for current applicability at any time. Competitive sealed proposals may be used for the procurement of services of consultants, professionals, contractors and any other entity sought for procurement by the executive director or the board.

(3) Public Notice. Public notice of the request for proposals shall be given in the same manner provided for giving public notice of an invitation for bids, as provided by R131-4-401.

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the notice and the date and time set for the receipt of proposals by the board or executive director. For each project, a proposal preparation time-frame shall be included to provide offerors a reasonable time to prepare their proposals, not less than ten calendar days, unless a shorter time is deemed necessary.

(5) Form of Proposal. The request for proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with invitations for bids by this rule. Addenda may also be issued to qualified proposers after the deadline for proposals and prior to the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date. For the purposes of this rule, the established due date will be either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

(8) Late Proposals, Late Withdrawals, or Late Modifications: Except for modifications allowed pursuant to negotiation, any proposal, withdrawal, or modification received at the place designated for receipt of proposals after the established due date as defined in this rule shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

(a) Proposals shall be opened publicly, and shall only identify the names of the offerors in public. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Proposals and modifications shall be held in a secure place until the established due date.

(b) After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of addenda received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

(10) Evaluation of Proposals.

(a) Evaluation Factors in the Request for Proposals. The request for proposals shall be prepared in a manner to assure maximum practicable competition, state all of the evaluation factors as well as the relative importance of price and other evaluating factors.

(b) Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required.

(c) Classifying Proposals. Proposals shall be initially classified as:

(i) Acceptable;

(ii) Potentially acceptable, that is, having the possibility of being made acceptable; or

(iii) Unacceptable. Offerors whose proposals are unacceptable shall be so notified.

(11) Proposal Discussions with Individual Offerors.

(a) "Offerors" means only those responsible persons submitting proposals that are acceptable or potentially acceptable, the number of which may be limited to no less than the two best proposals. This shall not include persons who submitted unacceptable proposals.

(b) Purposes of Discussions. Discussions may be held in order to:

(i) review the board's requirements and the offerors' proposals; and

(ii) facilitate the development of a contract that will be most advantageous to the board, taking into consideration price and other evaluation factors listed in the request for proposals.

(c) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Discussions may be conducted for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and

revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers. There shall be no disclosure of any information derived from proposals submitted by competing offerors except as otherwise provided by this rule or law. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(12) Best and Final Offers. The executive director shall establish a common time and date to submit best and final offers. These shall be submitted only once unless the executive director makes a written determination before each subsequent round of best and final offers that another round is in the best interest of the state, and additional discussions will be conducted or the requirements may be changed. Otherwise, no discussion of, or changes in the best and final offers shall be allowed prior to award. If offerors do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(13) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in R131-4-408.

(b) Confirmation of proposal. When it appears from a review of the proposal before an award is made, that a mistake has been made, the offeror shall be asked to confirm the proposal. If the offeror alleges that a mistake occurred, the proposal may be corrected or withdrawn during any discussions that are held or the conditions listed below, by this rule, are met.

(c) Mistakes discovered after receipt but before award. This Subsection defines procedures to be applied in four situations in which mistakes in proposals may be discovered after receipt of proposals but before award.

(i) During discussions; prior to best and final offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated in accordance with this rule.

(iii) Corrections of mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(A) the mistakes and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn;

(B) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer, and the correction of the mistake would not be contrary to the fair and equal treatment of other offerors.

(iv) Withdrawals of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, offeror may be permitted to withdraw a proposal if:

(A) a mistake was made that is clearly evident on the face of the proposal and the intended amount of the offer is not evident; or

(B) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made that it does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis the proof provided would not be contrary to the fair and equal treatment of other offerors.

(d) Mistakes discovered after award. An offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.

(14) Award.

(a) Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous to the state based on the factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b) One proposal received. If only one proposal is received in response to a request for proposals, the executive director may make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

(15) Publicizing Awards.

(a) Notice. After the selection of the successful offeror, notice of award shall be available in the executive director's office in Salt Lake City, Utah and may be available on the Internet.

(b) Information Disclosed. The following shall be disclosed with the notice of award:

(i) the rankings of the proposals;

(ii) the names of the selection committee members;

(iii) the amount of each offeror's cost proposal;

(iv) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and

(v) the written justification statement supporting the selection.

(c) Information Classified as Protected. After due consideration and public input, the following has been determined by the board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the board and shall be classified as protected records:

(i) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(ii) non-public financial statements.

(16) Confidentiality of Performance Evaluations and Reference Information. The board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsections 63-2-304(6) and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The executive director may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R131-4-409. Small Purchases.

(1) Procurements of $200,000 or Less.

(a) The executive director may make procurements estimated to cost $200,000 or less by soliciting at least two firms to submit written quotations.

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the board.

(c) If the executive director determines that other factors in addition to cost should be considered in the procurement, the executive director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in R131-4-408 except that a public notice is not required and

only invited firms may submit proposals.

(2) Procurements of $50,000 or Less. The executive director may make small purchases of $50,000 or less in any manner that he shall deem to be adequate and reasonable.

(3) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this rule.

R131-4-410. Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement.

The procedures concerning sole source procurement in this rule may be used if, in the discretion of the executive director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:

(a) there is only one qualified source for the required craftsmanship, supply, service, or construction item; or

(b) the level of craftsmanship and quality to replicate restore is critical to the best interests of the state.

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

(d) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;

(e) where a sole supplier's item is needed for trial use or testing;

(f) procurement of public utility services; or

(g) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.

(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the executive director in writing and may cover more than one procurement.

(3) Negotiation in Sole Source Procurement. The executive director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.

R131-4-411. Emergency Procurements.

(1) Application. This Section shall apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

(2) Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.

(3) Scope of Emergency Procurements. Emergency procurements shall be limited to only those items necessary to meet the emergency.

(4) Authority to Make Emergency Procurements.

(a) The executive director may make an emergency procurement when, in the executive director's determination, an emergency condition exists or will exist and the need cannot be met through other procurement methods.

(b) The procurement process shall be considered unsuccessful when all bids or proposals received pursuant to an invitation for bids or request for proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made.

(5) Source Selection Methods. The source selection method used for emergency procurement shall be selected by the executive director with a view to assuring that the required items are procured in time to meet the emergency. Given this constraint, as much competition as the executive director determines to be practicable shall be obtained.

(6) Specifications. The executive director may use any appropriate specifications without being subject to the requirements of R131-4-301 through R131-4-304.

(7) Required Construction Contract Clauses. The executive director may modify or not use the construction contract clauses otherwise required by R131-4-601.

(8) Written Determination. The executive director shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the project file.

R131-4-411A. Protected Records.

(1) General Classification. Records submitted to the board or the executive director in a procurement process are classified as public unless a different classification is determined in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(2) Protected Records. Records meeting the requirements of Section 63-2-304 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of R131-4-411A(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63-2-304(2) and R131-4-411A(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the board, including, but not limited to, those records for which such a determination is made in R131-4 or R131-1.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in R131-4-411A(2)(a) and R131-4-411A(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with R131-4-411A shall be notified by the executive director prior to the executive director's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63-2-308 and 63-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the board or executive director to protect a record from public disclosure where such protection is allowed by law.

R131-4-412. Cancellation and Rejection of Bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state as determined by the board or executive director in writing. The reasons shall be made part of the contract file.

R131-4-413. Determination of Nonresponsibility of Bidder or Offeror.

A written determination of nonresponsibility of a bidder or offeror shall be made by the executive director when information of such nonresponsibility is provided to the executive director. The unreasonable failure of a bidder or

offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to R131-4-413 shall not be disclosed outside of the board or executive director's office without prior written consent by the bidder or offeror.

R131-4-414. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

R131-4-415. Rules and Regulations to Determine Allowable Incurred Costs - Required Information - Auditing of Books.

(1) Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:

(a) adequate price competition is not obtained as provided in this rule; and

(b) the amounts listed in Subsection (3) below are exceeded.

(2) Adequate Price Competition. Adequate price competition for portions of, or entire contracts, occurs when:

(a) a contract is awarded based on competitive sealed bidding;

(b) a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

(c) a portion of a contract is awarded for a lump sum amount or a fixed percentage of other costs, and the cost of the lump sum or percentage amount is one of the selection criteria, and when contractor selection is made from competitive sealed proposals;

(d) a portion of a contract is awarded for which adequate price competition that was not otherwise obtained when competitive bids were obtained and documented by either the board, executive director, or the contractor;

(e) costs are based upon established catalogue prices or market prices;

(f) costs are set by law or rule; or

(g) the executive director makes a written determination that other circumstances have resulted in adequate price competition.

(3) Amounts. R131-4-415 does not apply to:

(a) Contracts or portions of contracts costing less than $200,000, and

(b) Change orders or other price adjustments of less than $50,000.

(4) Other Applications: R131-4-415 may apply to any contract or price adjustment when it is found by the executive director to be in the best interest of the state and any contract may require cost or pricing data and certifications by the contractor as to the accuracy of such cost or pricing data.

(5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the data current throughout the negotiations and certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(6) Refusal to Submit. If the offeror fails to submit the required data, the executive director may disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If the matter involves a price adjustment, the executive director may further investigate the price adjustment, disallow any price adjustment, or set the amount of the price adjustment.

(7) Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Board shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It shall be assumed that overstated cost or pricing data resulted in an increase of the contract price in the amount of the defect plus any related overhead and profit or fee; therefore, unless documentation can show that the defective data were not used or relied upon, the price may be reduced by a requisite amount. In establishing that defective data caused an increase in the contract price, the executive director shall not be required to reconstruct the negotiation or speculate on the mental attitudes of the negotiating parties if correct data had been submitted at the time of agreement on price.

(8) Audit. The state, board or executive director may, in its discretion, and at reasonable times and places, audit or cause to be audited the books and records of any person who has submitted cost or pricing data pursuing to this rule or any contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) Retention of Books and Records. Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and records that relate to the cost or pricing data for three years following the end of the fiscal year in which final payment is made under the prime contract and by the subcontractor for three years following the end of the fiscal year in which final payment is made under the subcontract.

R131-4-416. Cost-Plus-a-Percentage-of-Cost Contract.

(1) Subject to the limitations of R131-4-416, any type of contract which will promote the best interests of the state or the Board may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is only allowed as approved by the board, otherwise it is prohibited. A cost-reimbursement contract with a guaranteed maximum price may be used only when a determination is made in writing by the board that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(2) Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the executive director or the board that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

R131-4-417. Period of Time for Contract of Supplies.

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the state or the board; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(2) Prior to the utilization of a multi-year contract, it shall be determined in writing by the executive director or the board that estimated requirements cover the period of the contract and are reasonably firm and continuing and that such a contract will serve the best interests of the state or the board by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

R131-4-418. Right to Inspect Place of Business of Contractor or Subcontractor.

The state, board or the executive director may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the board or the executive director.

R131-4-419. Determinations Final Except when Arbitrary and Capricious.

The determinations required by R131-4-401, R131-4-408, R131-4-410, R131-4-411, R131-4-413, R131-4-415, R131-3-416, and R131-4-417 are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

R131-4-420. Factual Information to Attorney General if Collusion Suspected.

When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

R131-4-421. Records of Contracts Made.

The executive director shall maintain a record listing all contracts made under R131-4-410 or R131-4-111 and shall maintain the record in accordance with Title 63, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the supplies, services, or construction procured under each contract.

R131-4-423. Purchase of Prison Industry Goods.

(1) The board shall purchase goods and services produced by the Utah Correctional Industries Division as provided by R131-4-423, which is an exemption from other provisions of R131-4, when in the opinion of the board or executive director such purchase is feasible.

(2) The board or executive director may not purchase any goods or services provided by the Utah Correctional Industries Division from any other source unless it has been determined in writing by the director of the Utah Correctional Industries and the board or executive director, that purchase from the Utah Correctional Industries Division is not feasible due to one of the following circumstances:

(a) the good or service offered by the Utah Correction Industries Division does not meet the reasonable requirements of the executive director or board, including the compatibility with the unique design requirements of the Capitol Hill facilities and grounds;

(b) the good or service cannot be supplied within a reasonable time by the Utah Corrections Industries Division; or

(c) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(3) In cases of disagreement, the decision may be appealed to a board consisting of the director of the Department of Corrections, the executive director, and a neutral third party agreed upon by the other two members.

R131-4-425. Purchase from Community Rehabilitation Programs.

(1) Except as provided under R131-4-425(3) below, notwithstanding any provision in R131-4 to the contrary, the board or executive director shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Section 63-56-425(2)(b)(iii) if:

(a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the board;

(b) the community rehabilitation program can supply the good or service within a reasonable time; and

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

(2) In accordance with Section 63-56-425 (5), each community rehabilitation program:

(a) may submit a bid to the Persons with Disabilities Advisory Board at any time and not necessarily in response to a request for bids; and

(b) shall certify on any bid it submits to the Persons with Disabilities Advisory Board, the Board or executive director that it is claiming a preference under Section 63-56-425.

(3) During a fiscal year, the requirement for the board or executive director to purchase goods and services produced by a community rehabilitation program under the preferred procurement list under Section 63-56-425(4) does not apply if the Division of Purchasing and General Services determines that the total amount of procurement contracts with community rehabilitation programs has reached $5 million for that fiscal year.

(4) In the case of conflict between a purchase under R131-4-425 and a purchase under R131-4-423, R131-4-425 prevails.

R131-4-501. Alternative Methods of Construction Contracting Management.

(1) Application. This Section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The executive director may devise an appropriate construction contract management method for a particular project that will best meet the needs of the board. The methods outlined in this rule are not an exclusive list.

(3) Selection. The executive director shall be expected to consider the results achieved on similar projects in the past and the methods used, other appropriate and effective methods, and how a method could be adapted or combined to meet the needs of the state.

(4) Criteria. Before choosing the construction contracting method, some factors that may be considered include:

(a) when the facility must be ready for occupancy;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the occupants are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed, the source of funding, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds;

(g) the availability, qualification, experience, and available time of assigned State personnel to the project;

(h) the availability, experience and qualifications of outside consultants and contractors.

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting

methods. The methods described are not mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the state. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) Single Prime Contractor. The single prime contractor method is typified by one business entity acting as a general contractor with the state to complete an entire construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under this method, the board or the board's agent shall contract directly with a number of specialty contractors to complete portions of the project in accordance with the board's drawings and specifications. The board or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors shall have this responsibility.

(d) Design-Build. The use of a design build provider is authorized if determined to be used in accordance with this rule. In a design-build project, a business entity shall contract directly with the board to meet requirements described in a set of performance specifications. Both the design and construction responsibilities are assumed by the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. The use of a construction manager, including a construction manager/general contractor, is authorized if determined to be used in accordance with this rule and shall be selected in accordance with R131-4. A construction manager shall be experienced in construction, have the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the addition of change orders. A contract with a construction manager may be issued early in a project to assist in the development of a cost effective design. The construction manager may be appointed the single prime contractor, or may be required to guarantee that the project will be completed by a specified time, and not to exceed a specified maximum price. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost or, on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may also provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure that subcontractor in accordance with R131-4 in the same manner as if the subcontract work was procured directly by the board.

(f) Sequential Design and Construction. Sequential design and construction is a method whereby design of substantially the entire structure is completed prior to beginning the construction process.

(g) Phased Design and Construction. Phased design and construction is a method whereby construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction.

(h) Design Assist Contracting. Design assist contacting may be used when it is determined by the executive director that a contractor (including a particular subcontractor trade) is needed subject to the following:

(i) it is determined that the design assist contractor (DAC) has a unique knowledge of a material or product that warrants the interaction of the DAC early on with the designer;

(ii) the DAC will be providing construction estimates, details and documents as well as the construction or installation of materials or products into the project;

(iii) the DAC is selected through a competitive sealed proposal process where qualifications are the main criteria for selection;

(iv) the DAC will provide information to the executive director and the designer of the project as needed to define the scope of the work for a fee; and

(v) a contract may be entered with a DAC only when the proposed cost for the work is equal to or less than the budget established by the board for the project, provided that the board may increase the budget, the board/executive director may use the information provided by the DAC and initiate a procurement process for the construction or installation; or the board/executive director may reduce the scope of the work.

R131-4-502. Procurement of Design-Build Highway Project Contracts.

The board may contract with the Department of Transportation as needed for procurement of design-build transportation project contracts surrounding Capitol Hill.

R131-4-503. Bid Security Requirements.

(1) Bid security in amount equal to at least 5% of the amount of the bid shall be required for all competitive sealed bidding for construction contracts with an amount over $50,000. The board finds that requiring a bid bond for construction contracts of $50,000 or less is presumed not necessary to protect the state or the board, though the executive director or the board has the right on an individual contract to so require the bonds. Bid security shall be a bond in a form and from a surety company that meets the requirements of R131-4-504.

(2) When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless, pursuant to R131-4, it is determined by the executive director that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in R131-4-401. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security. Failure to submit an acceptable bid security in connection with an invitation for bids shall be deemed nonsubstantial where only one bid is received, and there is not sufficient time to rebid the contract.

(4) When issuing an invitation for bid under R131-4, the executive director may not require a person or entity who is bidding for a contract to obtain a bond of the type referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

R131-4-504. Bonds Necessary When Contract is Awarded - Waiver - Action - Attorneys' Fees.

(1) When a construction contract for an amount over $50,000, is awarded under R131-4, the contractor to whom the contract is awarded shall deliver the following bonds or security to the executive director, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the executive director that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form

satisfactory to the state; and

(b) a payment bond satisfactory to the executive director that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) The board finds that requiring a performance or payment bond for construction contracts of $50,000 or less is presumed not necessary to protect the state or the board, though the executive director or the board has the right on an individual contract to so require the bonds.

(3) If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid bonds, payment bonds and performance bonds must be from sureties meeting the requirements of this rule and must be on the exact bond forms most recently adopted by the board and on file with the board.

(5) Surety firm requirements. All surety firms must be authorized to do business in the state of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The executive director may waive the bonding requirement if the executive director finds that bonds cannot be reasonably obtained for the work involved and, after seeking advice from the attorney general, that such bonds are not necessary to protect the board or the state, which finding shall be documented in the project files.

(7) A person shall have a right of action on a payment bond in accordance with Section 63-56-504.

R131-4-505. Preliminary Notice Requirement.

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under R131-4, shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this preliminary notice requirement shall not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the project or improvement for which labor, service, equipment or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under the Utah Procurement Code or R131-4.

(3) The preliminary notice required by Subsection (1) must be provided prior to commencement of any action on the payment bond.

R131-4-506. Form of Bonds - Effect of Certified Copy.

The form of the bonds shall be as required in R131-4-503 and R131-4-504 above. Any person may obtain from the executive director a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

R131-4-507. Qualifications of Contractors.

(1) Pre-Bidding Requirements. The following documents must be on file with the board before the bidding documents for a project may be issued to prospective bidders.

(a) If the type of work involved with the project requires a contractor's license, a photocopy of the bidder's current Utah contractor's license showing date issued, expiration date, bid limit amount or similar restriction, and the class of work for which licensed;(b) A statement from the bidder's surety stating that it will bond the bidder for an amount at least equal to the estimated cost of the contract as determined by the executive director. This requirement can be met by having the surety file an annual statement with the board showing the bonding limit it has established for the bidder.

(2) A form of surety statement and, when applicable, a form for prequalification, are available at the principal office of the board.

(3) Project Specific Requirements. The board may include additional qualification requirements in the solicitation documents as may be appropriate for a specific project.

R131-4-601. Construction Contract Clauses.

(1) Required Contract Clauses. Pursuant to Section 63-56-601, the document entitled "Required Construction Contract Clauses", dated March 28, 2001 and on file with the executive director, is hereby incorporated by reference. Except as provided in this rule, the executive director shall include some or all of these clauses in all construction contracts for more than $50,000.

(2) Revisions to Contract Clauses. The executive director may modify the clauses for inclusion in any particular contract. The clauses required by this Section may be modified for use in any particular contract when, pursuant to this rule, the executive director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this Section shall be included in any invitation for bids or request for proposals. Any variations shall be supported by a written determination by the executive director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the invitation for bids or request for proposals.

R131-4-602. Certification of Change Order.

Under a construction contract, any change order which increases the contract amount shall be subject to prior written certification that the change order is within the determined project or contract budget. The certification shall be made by the executive director. If the certification discloses a resulting increase in the total project or contract budget, the executive director shall not execute or make the change order unless sufficient funds are available or the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed prior to the change order under consideration. However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this rule.

R131-4-701. Procured in Accordance with R131-1.

Architectural and engineering services shall be procured in accordance with R131-1.

R131-4-703. Selection as Part of Design-Build or Lease.

Notwithstanding any other provision of R131-4, architect-engineer services may be procured by the board as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, provided that the qualifications of those providing the architect-engineer services are part of the consideration in the selection process.

R131-4-801. In General.

While the board is exempt from the requirements of Title 63, Chapter 56, Utah Procurement Code and is required to adopt procurement rules substantially similar to the requirements of that chapter, the board recognizes that the provisions of Title 63,

Chapter 56, Utah Procurement Code Section 63-56-801 through 63-56-820 shall apply to the procurement processes of the board and the executive director. The following R131-801A through R131-4-820 shall be operative, whether through the Utah Procurement Code or through the rules themselves.

R131-4-801A. Protest to Executive Director - Time - Authority to Resolve Protest.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the executive director. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to bid opening or the closing date for proposals. The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.

(2) The executive director shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.

R131-4-802. Effect of Timely Protest.

In the event of a timely protest under R131-4-801A(1), Section 63-56-810(1) or R131-4-815(1), the board shall not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the executive director after consultation with the head of any applicable using agency or the head of any applicable purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

R131-4-803. Costs to or Against Protestor.

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the state:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) When a protest is not sustained by the procurement appeals board, the protestor shall reimburse the board or the Division of Purchasing and General Services, in accordance with which agency incurred the expense, for the per diem and expenses paid to witnesses or appeals board members and any additional expenses incurred by the state agency staff who have provided materials and administrative services to the procurement appeals board for that case.

R131-4-804. Debarment from Consideration for Award of Contracts - Causes for Debarment.

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the executive director after consultation with the attorney general and any applicable using agency, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The executive director, after consultation with the attorney general and any applicable using agency, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (2) of R131-4-804, in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

(2) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract; or

(e) any other cause the executive director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in rules and regulations.

R131-4-805. Authority to Resolve Controversy Between Capitol Preservation Board and Contractor.

The board/executive director is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy which arises between the board/executive director and a contractor under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistakes, misrepresentation, or other cause for contract modification or rescission.

R131-4-806. Decisions of Executive Director to be in Writing - Effect of no Writing.

(1) The executive director, or board if determined by the board, shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in the Utah Procurement Code and R131-4.

(2) A decision shall be effective until stayed or reversed on appeal, except to the extent provided in R131-4-802. A copy of the decision under Subsection (1) above shall be mailed or otherwise furnished immediately to the protestor, prospective contractor, or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor appeals administratively to the procurement appeals board in accordance with Subsection 63-56-810(2) or the protestor, prospective contractor, or contractor commences an action in district court in accordance with R131-4-815 (Section 63-56-815).

(3) If the executive director or board, depending who is considering the matter, does not issue the written decision regarding a contract controversy within 60 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

R131-4-807. Procurement Appeals Board.

The board recognizes the provisions of Sections 63-56-807 through 63-56-813, related to the procurement appeals board, as being applicable to the procurement processes of the board and the executive director.

R131-4-814. Right to Appeal to Court of Appeals.

In accordance with Section 63-56-814, any person receiving an adverse decision of the board may appeal a

decision of the procurement appeals board to the court of appeals. However, no appeal may be made by the board unless recommended by the executive director and approved by the attorney general.

R131-4-815. Jurisdiction of District Court.

The board recognizes the jurisdictional provisions of Section 63-56-815 regarding the district court.

R131-4-816. Effect of Prior Determination by Agents of State.

The board recognizes the provisions of Section 63-56-816 as being applicable in that in any judicial action under R131-4-815, determinations by employees, agents, or other persons appointed by the state shall be final and conclusive only as provided in R131-4-419, R131-4-806, and R131-4-807.

R131-4-817. Statutes of Limitations.

(1) The board recognizes the statute or limitation requirements of Section 63-56-817 as being applicable and therefore:

(a) Any action under R131-4-815(1)(a) shall be initiated as follows:

(i) within 20 calendar days after the aggrieved person knows or should have known of the facts giving rise to the action; provided, however, that an action with respect to an invitation for bids or request for proposals shall be initiated prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action prior to bid opening or the closing date for proposals; or

(ii) within 14 calendar days after receipt of a final administrative decision pursuant to either R131-4-806 or R131-4-807, whichever is applicable.

(b) Any action under R131-4-815(1)(b) shall be commenced within six months after receipt of a final administrative decision pursuant to R131-4-806 or R131-4-807, whichever is applicable.

(c) The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to R131-4-815(1)(c), except notice of appeals from the procurement appeals board pursuant to R131-4-807 concerning actions on a contract or for breach of contract shall be filed within one year after the date of the procurement appeals board decision.

R131-4-818. Effect of Violation Prior to Award of Contract.

The board recognizes Section 63-56-818 as being applicable and therefore, if prior to award it is determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be cancelled or revised to comply with the law.

R131-4-819. Effect of Violation after Award of Contract.

The board recognizes Section 63-56-819 as being applicable and therefore, if after an award it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(a) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or

(b) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

(a) The contract may be declared null and void; or

(b) The contract may be ratified and affirmed if such action is in the best interests of the state, without prejudice to the board's and the state's rights to any appropriate damages.

R131-4-820. Interest Rate.

The board recognizes Section 63-56-820 as being applicable and therefore:

(1) Except as provided in (2) below, in controversies between the board, including the executive director, and contractors under R131-4-801 through R131-4-820, interest on amounts ultimately determined to be due to a contractor or to the board and the state are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) This rule does not apply to public assistance benefits programs.

R131-4-901. Public Procurement Units.

The board recognizes the applicability of Sections 63-56-901 through 63-56-907 and the board is authorized to enter into agreements under those Sections and those Sections shall be operative in regard to such agreements.

R131-4-1001. Accepting or Offering Emolument.

To the extent allowed by law, the provisions of Sections 63-56-1001 and 63-56-1002 restricting the acceptance or offering of emolument shall apply.

KEY: contracts, public buildings, procurement
February 29, 2008 63C-9-301
Notice of Continuation May 12, 2006

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rule.
R156-47b-101. Title.

This rule is known as the "Massage Therapy Practice Act Rule."

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or this rule:

(1) "COMTA" means the Commission on Massage Therapy Accreditation.

(2) "Direct supervision" as used in Subsection 58-47b-302(3)(d) means that the apprentice supervisor is in the facility where massage is being performed and is immediately available to the apprentice for advice, direction and consultation while the apprentice is engaged in performing massage.

(3) "Lymphatic massage" as used in Subsections 58-47b-302(4) and 58-47b-304(1)(i) means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(4) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(5) in Section R156-47b-502.

R156-47b-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 47b.

R156-47b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curricula, apprenticeship curricula, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) Curricula must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curricula shall be a minimum of 600 hours and shall include the following:

(i) anatomy, physiology and pathology - 150 hours;

(ii) massage theory including the five basic strokes - 300 hours;

(iii) professional standards, ethics and business practices - 35 hours;

(iv) safety and sanitation - 15 hours;

(v) clinic or practicum - 100 hours; and

(vi) other related massage subjects as approved by the Division in collaboration with the Board.

(c) In addition to the curriculum requirements of Subsection R156-47b-302a(1)(b), new curricula shall include the major content areas, but are not required to meet the percentage weights of the National Certification Board of Therapeutic Massage and Bodywork (NCBTMB), National Certification Examination Content Outline, published July 2003, which is adopted and incorporated by reference.

(2) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must document that the education and training was approved by NCBTMB as evidenced by current NCBTMB certification.

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass one of the following examinations:

(i) the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB);

(ii) the National Certification Examination for Therapeutic Massage (NCETM); or

(iii) the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx).

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" shall pass the FSMTB MBLEx.

(3) Applicants for licensure as a massage apprentice shall pass the Utah Massage Law and Rule Examination.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised passes the FSMTB MBLEx and becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);

(3) if an apprentice being supervised fails the FSMTB MBLEx three times:

(a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the FSMTB MBLEx;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(5) train the massage apprentice in the areas of:
(a) massage theory - 50 hours;
(b) massage client service - 300 hours;
(c) hands on instruction - 325 hours;
(d) massage techniques - 120 hours;
(e) anatomy, physiology and pathology - 150 hours;
(f) business practices - 25 hours;
(g) ethics - 15 hours; and
(h) safety and sanitation - 15 hours;
(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;
(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";
(8) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;
(9) make available to the division upon request, the apprentice's training records;
(10) verify the completion of the apprenticeship program on forms available from the division;
(11) notify the division within ten working days if the apprenticeship program is terminated;
(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and
(13) ensure that the massage client services required in Subsection (5)(b) only be performed on the public; all other hands on practice must be performed by an apprentice on an apprentice or supervisor.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.
(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:
(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, shall disqualify an applicant from becoming licensed; or
(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:
(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;
(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;
(iii) any offense involving controlled dangerous substances; or
(iv) conspiracy to commit or any attempt to commit any of the above offenses.
(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.
(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.
(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.
(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-47b-303. Renewal Cycle - Procedures.
(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.
(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308e.

R156-47b-502. Unprofessional Conduct.
"Unprofessional conduct" includes:
(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;
(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;
(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;
(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;
(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;
(6) failure to use appropriate draping procedures to protect the client's personal privacy; and
(7) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.

R156-47b-601. Standards for Animal Massage Training.
In accordance with Subsection 58-28-8(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:
(1) quadruped anatomy;
(2) the theory of quadruped massage; and
(3) supervised quadruped massage experience.

KEY: licensing, massage therapy
February 21, 2008 **58-1-106(1)(a)**
Notice of Continuation January 31, 2006 **58-1-202(1)(a)**
58-47b-101

R251. Corrections, Administration.
R251-304. Contract Procedures.
R251-304-1. Authority and Purpose.

(1) This rule is authorized by Section 64-13-25.

(2) The purpose of this rule is to establish minimum standards for the organization and operation of correctional contracting, to promote accountability, and to ensure a safe and professional operation of correctional programs.

R251-304-2. Definitions.

(1) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(2) "Contractor" means any person or organization contracting with the Department to provide goods or services.

(3) "Department" means the Utah State Department of Corrections (UDC).

(4) "Executive Director" means the executive director of the Department of Corrections.

(5) "Monitor" means to scrutinize or check systematically on a periodic or ongoing basis.

(6) "Review" means the process, culminating in a written report, of inspecting and examining contract performance at least annually.

R251-304-3. Policy.

It is the policy of the Department that:

(1) contractors shall provide all services due under a contract as an independent contractor;

(2) contractors shall have no actual or implied authority to bind the State of Utah, any of its political subdivisions, or the Department of Corrections to any agreement, settlement, or understanding whatsoever;

(3) no provision of a contract shall be construed to bring contractors or their officers, agents, employees, volunteers, or subcontractors (if any) within the coverage of the Utah Governmental Immunity Act, Title 63, Section 30;

(4) all contractors' officers, employees, subcontractors, agents, or volunteers providing services shall be appropriately licensed and shall successfully complete a training session offered by UDC prior to contract implementation;

(5) contractors shall allow authorized UDC personnel full access to contract-related records with or without notice during contractors' regular business hours;

(6) contractors shall indemnify, hold harmless, and release the State of Utah and its officers, agents, and employees from and against all losses, damages, injuries, lawsuits and other proceedings arising out of the breach of, or performance under, the contract by contractors and their officers, agents, employees, subcontractors, and volunteers;

(7) all contracts shall be monitored throughout the contract period and reviewed at least annually;

(8) contracts may be terminated by the Department or the contractor with or without cause;

(9) contractors shall comply with all state and local regulatory requirements, including the following:

(a) zoning ordinances,
(b) building codes,
(c) applicable health codes,
(d) life and safety codes,
(e) professional licenses,
(f) business licenses, or
(g) other applicable federal, state, and local laws;

(10) UDC shall have the right to deny contractors, their agents, employees, and volunteers, or the agents, employees, and volunteers of their subcontractors, if any, access to premises controlled, held, leased, or occupied by UDC, if, in the sole judgment of UDC, such personnel pose a threat to UDC's legitimate security interests;

(11) prior to signing the contract, contractors shall disclose to UDC the names and state job titles of any of their agents, officers, partners, volunteers, or employees who are also employees of the State of Utah;

(12) UDC reserves the right to reject contractors' use of any person who, in the opinion of the Department, represents a threat to legitimate departmental interests;

(13) at the time the contract is awarded, contractors shall provide to UDC for a criminal records check the names, birth dates and social security numbers of all contractors' officers, employees, agents, and volunteers who will be providing services under contracts; and, during the contract period, contractors shall provide the same information to UDC on their new officers, employees, agents, and volunteers;

(14) contractors and UDC shall allow members of the general public to inspect Department contracts during regular business hours;

(15) public inquiries to contractors regarding specific offenders shall be referred to UDC; and

(16) decisions to terminate contracts may be appealed by contractors to the Executive Director of the Department of Corrections; the Director of Purchasing; or the District Court of the State of Utah.

KEY: corrections, contracts
February 19, 2003 **64-13-25**
Notice of Continuation February 5, 2008

R277. Education, Administration.
R277-423. Delivery of Flow Through Money.
R277-423-1. Definitions.

A. "State-supported minimum school program" means school programs for kindergarten, elementary, and high schools which may be operated and maintained for the total of costs set by the Legislature annually.

B. "Bank transfer" means a monthly deposit of money to each school district's or charter school's bank as authorized by the USOE via the State Treasurer and agent bank.

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

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

E. "Flow through money" means state funds appropriated under the state-supported minimum school program and federal funds, both of which are administered by the Board and disbursed to individual school districts and charter schools.

R277-423-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to establish rules for the minimum school program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe the process whereby flow through money is disbursed to school districts and charter schools.

R277-423-3. Procedures.

A. An estimate of the amount of each school district's and charter school's share of state funds appropriated for the state-supported minimum school program is made by the USOE annually before June 30. The estimate shall indicate, for each district and charter school, its estimated number of units and the cost of its state-supported minimum school programs. One-twelfth of the district's and charter school's share of the state funds constitutes monthly payments. The estimates are revised periodically to accurately represent one-twelfth of the district's and charter school's share of the state funds. A final statement is made with districts and charter schools following the end of the fiscal year.

B. State and federal funds shall be transferred to school districts and charter schools by means of bank transfers.

(1) The USOE shall prepare a summary listing funds for each individual program and total funds for each school district and charter school which shall be mailed electronically to each school district and charter school. It shall also prepare a summary listing the designated bank and amount of funds for each school district and charter school on the electronic funds transfer memo for the state designated agent bank and the State Treasurer.

(2) The USOE shall, in a timely manner, complete the necessary accounting work for the transfer of funds and deliver the request to the State Department of Finance. The USOE shall coordinate the letter of credit for federal funds withdrawal for deposit with the State Treasurer in accordance with the cash management agreement with the US Treasury.

(3) The State Department of Finance shall complete necessary accounting work to have funds authorized for release by the State Treasurer's office.

(4) The State Treasurer's office shall release funds in accordance with the electronic funds transfer memo to the state designated agent bank in time to ensure deposit of funds in each school district's and charter school's designated bank by 11:00 a.m. on the last working day of each month.

(5) The state designated agent bank shall deposit funds to each school district's and charter school's designated account by 11:00 a.m. on the last working day of each month.

(6) LEAs shall keep bank account transfer information accurate and current to enable the monthly transfers of funds to be completed in a timely manner; all information shall be sent to the USOE audit/finance specialist in the School Finance and Statistics Section at the USOE.

C. When a disruption occurs in the procedure specified in Subsection 3(B), the USOE shall coordinate transfer procedures in a timely manner.

D. The USOE may administer state and federal flow through money for state institutions and private and parochial schools. It prepares and processes vouchers for the funds and forwards warrant requests authorizing the State Treasurer to make payment to the identified recipient.

R277-423-4. Reports.

A school district or charter school that fails to meet deadlines for submitting to the USOE reports that are necessary to calculate its share of state funds or that fails to meet deadlines for the annual audit report may have its state funds withheld until an acceptable report is filed with the USOE in accordance with R277-484, Data Standards.

KEY: education finance
February 7, 2008 **Art X Sec 3**
Notice of Continuation October 5, 2007 **53A-1-402(1)(f)**
53A-1-401(3)

R277. Education, Administration.
R277-470. Charter Schools.
R277-470-1. Definitions.

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

C. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

D. "Charter school deficiencies" means the following information:

(1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;

(2) a charter school is not providing required documentation following reasonable warning;

(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.

E. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.

F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.

G. "Days" means calendar days, unless specifically designated.

H. "Expansion" means a proposed increase of students or grade level(s) in an operating charter school at a single location.

I. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.

J. "Neighborhood school" for purposes of this rule, means a public, non-charter school.

K. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

L. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.

M. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area.

N. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

O. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-1a-104(5)(b).

P. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-104(6).

Q. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

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

S. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to adopt rules for charter school funding and fund distribution, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools and to ensure parent involvement on charter school boards.

R277-470-3. Maximum Authorized Charter School Students.

A. Total authorized students for both the 2007-08 and 2008-09 school years include all students who attend charter schools in the respective school years.

B. Local school boards may not approve locally-chartered schools for the 2007-08 or 2008-09 school years unless they notify the Board by April 15, 2007 of proposed locally-chartered schools and estimated numbers of students.

C. The Board, in consultation with the State Charter School Board, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5 minus the total projected number of students who will attend locally-chartered schools provided the State Charter School Board receives notification of proposed locally-chartered schools by April 15, 2007.

D. Locally-chartered schools submitting applications shall be considered with all new charters.

E. If the State Charter School Board does not receive written notification of proposed locally-chartered schools by April 15, 2007 and March 15 every year thereafter, the State Charter School Board may recommend approval of additional Board-chartered schools or expansions or satellites that include the entire total number of students allowed under 53A-1a-502.5.

R277-470-4. Charter School Orientation and Training.

A. Beginning with the 2006-2007 school year, all charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be held regionally or be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information including:

(1) charter school implementation requirements;

(2) charter school statutory and Board requirements;

(3) charter school financial and data management requirements;

(4) charter school legal requirements;

(5) federal requirements for charter school funding; and

(6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding after July 1, 2007 shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

(1) a new or expanding charter school's purpose, focus and governance structure, including names and contact information of governing board members;

(2) the number of new students that will be admitted into the school;

(3) the proposed school calendar for the charter school;

(4) the charter school's timelines for acceptance or rejection of new students;

(5) a State-approved student charter school application (beginning with the 2008-09 school year);

(6) procedures for transferring to or from a charter school, together with applicable timelines; and

(7) provide for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Section 53A-12-103.

B. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 150 days before the proposed opening day of school beginning with the 2008-09 school year; or

C. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place, and for schools opening after the 2007-08 school year at least 150 days before the proposed first day of school. The completed charter school website shall be provided to the State Charter School Board at least 170 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

R277-470-6. Transfer Student Criteria.

A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (5), including timelines.

B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(4) and using USOE-designated transfer forms.

C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE-designated transfer forms.

D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.

E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.

F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.

R277-470-7. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.

C. A local or state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open.

D. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

E. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

F. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-8. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds; or

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-9. Charter School Financial Practices and Training.

A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-1-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

G. Charter schools shall comply with R277-471, Oversight of School Inspections.

R277-470-10. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school, consistent with R277-470-4.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

(1) current board members and founding members;

(2) audit and financial records:

(a) record of state payments received;

(b) record of contributions received by the school from inception to date;

(c) test scores, including calendar of testing;

(d) current employees: identifying assignments and licensing status, if applicable;

(e) student lists, including home addresses or uniform student identifiers for current students;

(f) school calendar for previous school year and prospective school year;

(g) course offerings, if applicable;

(h) affidavits, signed by all board members providing or certifying (documentation may be required):

(i) the school's nondiscrimination toward students and employees;

(ii) the school's compliance with all state and federal laws;

(iii) that all information on application provided is complete and accurate;

(iv) that school meets/complies with all health and safety codes/laws;

(v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(vi) that the school is operating consistent with the school's charter;

(vii) the school's Annual Yearly Progress status under No Child Left Behind;

(viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

(ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-11. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-11.

B. To obtain its allocation of NCLB formula funds, a charter school shall identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-12. Charter School Parental Involvement.

A. Charter schools shall encourage and maintain active involvement of parents of current charter school students.

B. Beginning with the 2007-2008 school year, all charter schools shall have at least one elected parent representative chosen by and from parents of students currently attending the charter school to serve on a rotating basis as a voting member on the charter school's governing board with additional parents of students currently attending the charter school totaling a minimum of twenty-five percent of the governing board.

C. A charter school's charter shall provide the election process and selection process for selecting the required parent representative(s) for the governing board and the rotating terms for elected and identified parents.

D. Charter schools that apply for School LAND Trust funds shall have a majority of parents elected from parents of students currently attending the charter school on the committee designated to make decisions about School LAND Trust funds consistent with R277-477-3D.

R277-470-13. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's charter schools, including:

(1) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;

(2) quarterly review of summary financial records and disbursements;

(3) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;

(4) regular review of charter school operations to ensure the operations and practices are consistent with the currently approved charter language;

(5) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff; and

(6) audits and investigations of claims of fraud or misuse of public assets or funds.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

(1) financial deficiencies or irregularities; or

(2) persistently low student achievement inconsistent with comparable schools; or

(3) failure of the charter school to comply with state law,

Board rules, or directives; or

(4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters to include the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

R277-470-14. Approved Charter School Expansion.

A. The following shall apply to requests for expansion for approved and operating charter schools:

(1) The school satisfies all requirements of state law and Board rule.

(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1s-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no fewer than nine months prior to the date of the proposed implementation of the expansion.

C. Expansion requests for the 2008-09 school year shall be considered by the State Charter School Board as part of the total number of new charter school students allowed under 53A-1a-502.5(1).

R277-470-15. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(2) The school has operated successfully for at least three years;

(3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;

(6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;

(7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and

(8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;

(2) A detailed explanation of the governance structure for the satellite school, including appointed, elected and parent representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan. The applicant charter school shall include at least two voting parent members representing the parents of students at the satellite school on its governing board; at least one parent shall be elected by parents of students attending the satellite school;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-16. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-1a-104(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-1a-104(6)(a) from interested parties, including individuals desiring to nominate themselves, before June 1. The Board shall determine an appropriate number of Subaccount Committee members based upon nominations.

(2) The governor shall nominate one or more individuals who meet the qualifications of 53A-1a-104(6)(a) before June 1.

(3) Subaccount Committee members shall serve three year terms, beginning in June 2007. If revolving loan account funds continue to be available, the Board shall appoint at least two additional members in June 2008, to ensure continuity of the committee.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-1a-104(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment.

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-104(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

R277-470-18. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:

(1) recommendation for termination of a charter;

(2) recommendation for denial of expansions or satellite schools;

(3) recommendation for denial of local charter board proposed changes to approved charters;

(4) recommendation for denial or withholding of funds from local charter boards; and

(5) recommendation for denial of a charter.

C. No other issues may be appealed.

D. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and

(c) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of

the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-19. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

KEY: education, charter schools
February 7, 2008 **Art X, Sec 3**
Notice of Continuation October 31, 2003 **53A-1a-513**
53A-1a-515
53A-1a-502
53A-1a-505
53A-1-401(3)
53A-1a-510
53A-1a-509
41-6-115

R277. Education, Administration.
R277-515. Utah Educator Standards.
R277-515-1. Definitions.

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

B. "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

C. "Educator or professional educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license. The "professional" denotes that the individual holds or is seeking a Utah educator license as opposed to a paraprofessional or a volunteer or unlicensed teacher in a classroom

D. "Felony offense" means any offense for which an individual is charged with a first, second or third degree felony under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63 Chapter 56, or any other statute in the Utah Code establishing a felony.

E. "Illegal drug(s)" means a substance included in Schedules I, II, III, IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substance analog.

F. "Illegal sexual conduct" means any conduct proscribed under the Utah Criminal Code, Sections 76-5-401 through 406, Section 76-5a-1-4, and Section 76-9-704 through 704.

G. "Licensing discipline" means sanctions ranging from an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measures, for violation of professional educator standards.

H. "Misdemeanor offense" means any offense for which an individual is charged with a Class A, B, or C misdemeanor under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63 Chapter 56, or any other statute in the Utah Code establishing a misdemeanor.

I. "Plea in abeyance" means a plea of guilty or no contest which is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

J. "School-related activity" means any event, activity or program occurring at the school before, during or after school hours or which students attend at a remote location as representatives of the school or with the school's authorization, or both.

K. "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

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

M. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

N. "Utah Professional Practices Advisory Commission (Commission)" means a commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

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

P. "Weapon(s)" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6 which provides all laws related to educator licensing and professional practices, 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 establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents. The rule also recognizes that licensed public school educators are professionals and, as such, should share common professional standards, expectations and role model responsibilities. The rule distinguishes behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

A. The professional educator is responsible for compliance with federal, state, and local laws.

B. The professional educator shall familiarize himself with professional ethics and is responsible for compliance with applicable professional standards.

C. Failing to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall not be convicted of any felony or misdemeanor offense which adversely affects the individual's ability to perform assigned duties and carry out the responsibilities of the profession, including role model responsibilities.

(2) shall not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(3) shall not commit any act of cruelty to children or any criminal offense involving children;

(4) shall not be convicted of a stalking crime;

(5) shall not possess or distribute illegal drugs, or be convicted of any crime related to illegal drugs, including prescription drugs not specifically prescribed for the individual;

(6) shall not be convicted of any illegal sexual conduct, including offenses that are plea bargained to lesser offenses from an initial sexual offense;

(7) shall not be subject to a diversion agreement specific to sex-related or drug-related offenses, plea in abeyance, court-imposed probation or court supervision related to criminal charges which could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(8) shall not provide to students or allow students, under the educator's supervision or control to consume alcoholic beverages or unauthorized drugs;

(9) shall not attend school or a school-related activity in an assigned supervisory capacity, while possessing, using, or under the influence of alcohol or illegal drugs;

(10) shall not intentionally exceed the prescribed dosages of prescription medications while at school or a school-related activity;

(11) shall cooperate in providing all relevant information and evidence to the proper authorities in the course of an investigation by a law enforcement agency or by Child Protective Services regarding potential criminal activity. However, an educator shall be entitled to decline to give evidence against himself in any such investigation if the same may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(12) shall report suspected child abuse or neglect to law

enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with Board rules and school district policies regarding the reporting of suspected child abuse;

(13) shall strictly adhere to state laws regarding the possession of firearms, while on school property or at school-sponsored activities, and enforce district policies related to student access to or possession of weapons;

(14) shall not solicit, encourage or consummate an inappropriate relationship, written, verbal, or physical, with a student or minor;

(15) shall not participate in sexual, physical, or emotional harassment or any combination toward any public school-age student or colleague, nor knowingly allow harassment toward students or colleagues;

(16) shall not make inappropriate contact in any communication-written, verbal, or electronic-with minor, student, or colleague, regardless of age or location;

(17) shall not interfere or discourage students' or colleagues' legitimate exercise of political and civil rights, acting consistent with law and school district/school policies;

(18) shall provide accurate and complete information in required evaluations of himself, other educators, or students, as directed, consistent with the law;

(19) shall be forthcoming with accurate and complete information to appropriate authorities regarding known educator misconduct which could adversely impact performance of professional responsibilities, including role model responsibilities, by himself or others;

(20) shall provide accurate and complete information required for licensure, transfer, or employment purposes; and

(21) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure.

(22) shall notify the USOE at the time of application for licensure of past license disciplinary action or license discipline from other jurisdictions;

(23) shall notify the USOE honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(24) shall provide complete and accurate information during an official inquiry or investigation by school district, state, or law enforcement personnel.

D. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer.

(1) An educator shall not exclude a student from participating in any program, or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and shall not engage in conduct that would encourage a student(s) to develop a prejudice on these grounds or any other, consistent with the law.

(2) An educator shall maintain confidentiality concerning a student unless revealing confidential information to authorized persons serves the best interest of the student and serves a lawful purpose, consistent with federal and state Family Educational Rights and Privacy Acts (FERPA).

(3) Consistent with the Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and Board rules, a professional educator:

(a) shall not accept bonuses or incentives from vendors, potential vendors, or gifts from parents of students, or students where there may be the appearance of a conflict of interest or impropriety;

(b) shall not accept or give gifts to students that would suggest or further an inappropriate relationship;

(c) shall not accept or give gifts to colleagues that are inappropriate or further the appearance of impropriety;

(d) may accept donations from students, parents, and businesses donating specifically and strictly to benefit students;

(e) may accept, but not solicit, nominal appropriate personal gifts for birthdays, holidays and teacher appreciation occasions, consistent with school or school district policies and the Utah Public Officers' and Employees' Ethics Act;

(f) shall not use his position or influence to:

(i) solicit colleagues, students or parents or students to purchase equipment, supplies, or services from the educator or participate in activities that financially benefit the educator unless approved in writing by the local school board or governing board;

(ii) promote athletic camps, summer leagues, travel opportunities, or other outside instructional opportunities from which the educator receives personal remuneration, and that involve students in the educator's school system, unless approved in writing consistent with local school board or governing board policy and Board rule; and

(g) shall not use school property, facilities, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

A. A professional educator maintains a positive and safe learning environment for students, and works toward meeting educational standards required by law.

B. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall take prompt and appropriate action to prevent harassment or discriminatory conduct towards students or school employees that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(2) shall resolve disciplinary problems according to law, school board policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(3) shall supervise students appropriately at school and school-related activities, home or away, consistent with district policy and building procedures and the age of the students;

(4) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety or learning;

(5) shall demonstrate honesty and integrity by strictly adhering to all state and district instructions and protocols in managing and administering standardized tests to students consistent with Section 53A-1-608 and R277-473;

(a) shall cooperate in good faith with required student assessments;

(b) shall encourage students' best efforts in all assessments;

(c) shall submit and include all required student information and assessments, as required by state law and State Board of Education rules; and

(d) shall attend training and cooperate with assessment training and assessment directives at all levels.

C. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer: A professional educator:

(1) shall demonstrate respect for diverse perspectives, ideas, and opinions and encourage contributions from a broad spectrum of school and community sources, including communities whose heritage language is not English;

(2) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;
(3) shall maintain a positive and safe learning environment for students;
(4) shall work toward meeting educational standards required by law;
(5) shall teach the objectives contained in the Utah Core Curriculum;
(6) shall not distort or alter subject matter from the Core in a manner inconsistent with the law and shall use instructional time effectively; and
(7) shall use instructional time effectively consistent with school and school district policies.

R277-515-5. Professional Educator Responsibility for Compliance with School District Policies.
A. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator:
(1) understands and follows Board rules and local board policies
(2) understands and follows school and administrative policies and procedures;
(3) understands and respects appropriate boundaries, established by ethical rules and school policies and directives, in teaching, supervising and interacting with students and colleagues; and
(4) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with school and school district policy.
B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:
(1) shall resolve grievances with students, colleagues, school community members, and parents professionally, with civility, and in accordance with school district/charter school policies; and
(2) shall follow school district/charter school policies for collecting money from students, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.
A. A professional educator exhibits integrity and honesty in relationships with school and district administrators and personnel.
B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:
(1) shall communicate professionally and with civility with colleagues, school and community specialists, administrators and other personnel;
(2) maintains a professional and appropriate relationship and demeanor with students, colleagues and school community members and parents;
(3) shall not promote personal opinions, personal issues, or political positions as part of the instructional process in a manner inconsistent with law; expresses personal opinions professionally and responsibly in the community served by the school;
(4) shall comply with school and district policies, supervisory directives, and generally-accepted professional standards regarding appropriate dress and grooming at school and school-related events;
(5) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;
(6) shall honor all contracts for professional services;
(7) shall perform all services required or directed by the educator's contract with the school district, school, or charter school with professionalism consistent with local policies and Board rules; and
(8) shall recruit other educators for employment in another position only within district timelines and guidelines.

R277-515-7. Violations of Professional Ethics.
A. This rule establishes standards of ethical decorum and behavior for licensed educators in Utah.
B. Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against professional educators.
C. The Board and USOE shall adhere to the provisions of this rule in licensing and disciplining licensed Utah educators.
D. Reporting and employment provisions related to professional ethics are provided in:
(1) Section 53A-3-410;
(2) Section 53A-6-501;
(3) Section 53A-11-403; and
(4) R277-514-5.

KEY: educator, professional, standards
December 26, 2007 **Art X Sec 3**
53A-1-402(1)(a)
53A-6
53A-1-401(3)

R277. Education, Administration.
R277-609. Standards for School District, School and Charter School Discipline Plans.
R277-609-1. Definitions.

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

B. "Bullying" means behavior that:

(1) is intended to cause harm or distress;

(2) exists in a relationship in which there is an imbalance of power; and

(3) may be repeated over time.

C. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and

(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

D. "Disruptive student behavior" includes:

(1) the grounds for suspension or expulsion described in Section 53A-11-904; and

(2) the conduct described in Section 53A-11-908(2)(b).

E. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students who habitually disrupt school environments and processes.

F. "Qualifying minor" means a school-age minor who:

(1) is at least nine years old; or

(2) turns nine years old at any time during the school year.

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

R277-609-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, and Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to define bullying and outline requirements for school discipline plans and policies which school districts and charter schools shall meet to qualify for funding.

R277-609-3. School District, School and Charter School Responsibility to Develop Plans.

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for student and classroom management, and school discipline. The plan shall include:

(1) the definitions of Section 53A-11-910;

(2) written standards for student behavior expectations, including school and classroom management;

(3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;

(4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(8) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:

(a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide for training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(d) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(e) complement existing safe and drug free school policies and school harassment and hazing policies; and

(f) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-609-4. Implementation.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written

assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6. USOE Model Policies.

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

February 7, 2008	**Art X Sec 3**
Notice of Continuation August 10, 2004	**53A-1-401(3)**
	53A-1-402(1)
	53A-11-901

R277. Education, Administration.
R277-703. Centennial Scholarship for Early Graduation.
R277-703-1. Definitions.

A. "ATC" means Applied Technology Center.

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

C. "SEOP" means student education/occupational plan.

D. "Centennial Scholarship" means the amount awarded to an early graduating student designated in Section 53A-15-102.

R277-703-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-402(1), U.C.A. 1953, which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, Section 53A-15-101(5) and (6) which direct the Board to provide an early graduation option to students and to develop, implement and evaluate the early graduation program, and Section 53A-1-401(3), U.C.A. 1953, which authorizes the Board to adopt rules in accordance with its responsibilities.

B. This rule designates the Early Graduation Centennial Scholarship Certificate for use by public schools, allows for graduation to be flexible and appropriate to meet individual students' needs, and outlines the early graduation procedure. If a student graduates any time following the eleventh grade year and enters a Utah post-secondary institution, the school district shall receive a reimbursement designated for the public high school from which the student graduated early. The post-secondary institution shall receive an Early Graduation Centennial Scholarship Certificate signed by the high school principal entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.

A. A student shall complete the courses of study and credit mandated by the Board and by the local board of education.

B. Options for earning additional credit may include but are not limited to:

(1) Courses:

(a) High school summer school;

(b) High school or ATC early morning or after school classes;

(c) Courses completed at the student's own rate based on performance (the local board of education is responsible for assessment of mastery, R277-700-6);

(d) College courses numbered 101 and above from fully accredited institutions (concurrent enrollment, extension division, or continuing education classes);

(e) Local school district approved high school or college level correspondence courses;

(f) Equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit.

(2) Demonstrated proficiency by assessment (amount of credit to be determined by the local board of education, R277-700-6):

(a) Advanced Placement Examination as approved by the local board of education;

(b) ACT or SAT scores that meet or exceed a level set by the local board of education;

(c) Utah state or district secondary end-of-course tests;

(d) Demonstrated proficiency in a subject, as assessed by the local board of education;

(e) College Level Examination Program (CLEP) tests.

(3) Approved work experience, as assessed by the local board of education.

(4) Demonstrated mastery in an experimental program that has received prior approval from the Board (local board of education seeks approval from the Board);

(5) Increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the local board of education;

(6) Independent study: a student may be allowed credit for an independent research project or independent reading relevant to a course of study;

(7) Credit for experience gained during travel relevant to a specific course. Prior approval shall be obtained from and credit awarded by the local board of education.

R277-703-4. Early Graduation Student Education Plan.

A. In consultation with the student's parent or guardian and school advisor, each student shall indicate to the secondary principal the intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.

B. To be eligible for early graduation, a student shall have a current SEOP on file at the student's high school under provisions of R277-700-8.

R277-703-5. Local Education Requirements.

A. Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.

B. Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

R277-703-6. Funding Provisions.

A. A school district shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.

B. Payment provisions:

(1) Districts shall receive payment for one-half of the designated Centennial Scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.

(2) Districts shall receive payment based on a percentage of the Centennial Scholarship amount for each student reported as graduating during the twelfth grade year. These students shall also be listed on the S-3 report and payment shall be made to the district designated for the schools in the fiscal year following the students' graduation. Districts shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following schedule:

(a) End of first quarter of 12th grade year: 75 percent of one-half of the Centennial Scholarship amount;

(b) End of second quarter of 12th grade year: 50 percent of one-half of the Centennial Scholarship amount;

(c) End of third quarter of 12th grade year: 25 percent of one-half of the Centennial Scholarship amount;

(d) End of first trimester of 12th grade year: 67 percent of one-half of the Centennial Scholarship amount;

(e) End of second trimester of 12th grade year: 33 percent of one-half of the Centennial Scholarship amount.

C. A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the Early Graduation Centennial Scholarship Certificate to be used at a Utah public college, university, community college, applied technology center, or any other institution in Utah accredited by the Northwest Association of Schools and Colleges that offers post-secondary courses. The post-secondary institution shall complete the Early Graduation

Centennial Scholarship Certificate and submit it to the Utah State Office of Education. Upon receipt of the Early Graduation Centennial Scholarship Certificate, the Utah State Office of Education shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution. To be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

(1) The student who graduates at the end of the eleventh grade year shall receive a full Centennial Scholarship.

(2) The student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the Centennial Scholarship amount.

(3) The student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the Centennial Scholarship amount.

(4) The student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the Centennial Scholarship amount.

(5) The student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the Centennial Scholarship amount.

(6) The student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the Centennial Scholarship amount.

KEY: graduation requirements, curricula
1994 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-1-402(1)**
53A-1-401(3)
53A-15-101(5) and (6)

R277. Education, Administration.
R277-719. Standards for Selling Foods Outside of the Reimbursable Meal in Schools.
R277-719-1. Definitions.

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

B. "Foods of minimal nutritional value" as provided in 7 CFR 210, Appendix B, are:

(1) Soda Water--A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60 deg F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein;

(2) Water Ices--As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition;

(3) Chewing Gum--Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing;

(4) Certain Candies--Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:

(a) Hard Candy--A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops;

(b) Jellies and Gums--A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices;

(c) Marshmallow Candies--An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added;

(d) Fondant--A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints;

(e) Licorice--A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root;

(f) Spun Candy--A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine; and

(g) Candy Coated Popcorn--Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

C. "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages.

D. "Unit" means per container, package or amount served.

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

R277-719-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-19-201(1) which allows the Board to set standards relating to the use of school lunch revenues, and Section 53A-1-402(1)(e) which requires the Board to establish rules concerning school productivity and cost effectiveness measures and federal programs.

B. The purpose of this rule is to outline requirements for school district and charter school policies regarding foods sold outside of the reimbursable meal service.

R277-719-3. District and School Policies Regarding Vending Machines.

A. Each school district and charter school shall develop and implement a policy for schools that choose to provide vending machines.

B. The policy shall include:

(1) a requirement that all agreements for vending machines be in writing in a contract form approved by the local board of education or charter school governing board;

(2) accepted uses of vending machine income; and

(3) generally accepted accounting procedures, including periodic reports to the district of vending machine receipts and expenditures.

R277-719-4. District and School Policies Regarding Other Food Sales on Campus.

A. Each charter school and school district shall adopt a written policy for the sale of all foods that are not part of the reimbursable lunch, breakfast or after-school snack programs (i.e., vending, a la carte or other food sales). The policy shall apply to all foods sold anywhere on school grounds during the school day when school is in session in all areas of the school accessible to students.

B. The policy may:

(1) prohibit the sale of foods of minimal nutritional value.

(2) limit all foods to no more than 300 calories per unit.

(3) prohibit foods:

(a) that are more than 35 percent total fat (not including nuts, seeds, non-fat and low-fat dairy);

(b) in which more than 10 percent of the total calories come from saturated fat (not including nuts, seeds, non-fat and low-fat dairy);

(c) that contain any trans fats;

(d) that list "caffeine" as an ingredient;

(e) in which more than 35 percent of the product is sugar by weight (not including 100 percent fruit or vegetable juice with no added sugars; fruits; vegetables; nonfat or low-fat milk or yogurt); or

(f) with a sodium content greater than 200 mg per portion (not including 100 percent fruit or vegetable juice; fruits; vegetables; nonfat or low-fat milk, yogurt or cheese).

(4) limit beverage size to no more than 20 ounces, excluding water.

R277-719-5. Miscellaneous Provisions.

A. The provisions of this rule shall become effective no later than July 2, 2008 or when existing contracts expire.

B. School districts/charter schools shall provide to the USOE by January 12, 2009 a copy of the school district's/charter school's policy required under R277-719-4A.

C. The Board shall review the information received by charter schools/school districts no later than 60 days after the receipt of information and make available a report of findings and conclusions.

KEY: schools, foods, nutrition, vending machines
February 7, 2008 **Art X Sec 3**
53A-1-401(3)
53A-19-201(1)
53A-1-402(1)(e)

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the executive secretary, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the executive secretary if the executive secretary determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post

combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The executive secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the executive secretary determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the executive secretary shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s)(1), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2007.

KEY: air pollution, definitions
February 8, 2008 19-2-104(1)(a)
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-102. General Requirements: Broadly Applicable Requirements.
R307-102-1. Air Pollution Prohibited; Periodic Reports Required.

(1) Emission of air contaminants in sufficient quantities to cause air pollution as defined in R307-101-2 is prohibited. The State statute provides for penalties up to $50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

(2) Periodic Reports and Availability of Information. The owner or operator of any stationary air contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

R307-102-2. Confidentiality of Information.

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

R307-102-3. Reserved.

Reserved.

R307-102-4. Variances Authorized.

(1) Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

(a) to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

(b) to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

(c) to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

(2) Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

R307-102-5. No Reduction in Pay.

In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

R307-102-6. Emissions Standards.

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

KEY: air pollution, confidentiality of information, variances*

December 7, 2000	**19-2-104**
Notice of Continuation February 8, 2008	**63-46b-4**
	19-2-113

R307. Environmental Quality, Air Quality.
R307-115. General Conformity.
R307-115-1. Determining Conformity.

The provisions of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, effective as of the date referenced in R307-101-3, are hereby incorporated by reference into these rules.

KEY: environmental protection, air pollution, general conformity
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-170. Continuous Emission Monitoring Program.
R307-170-1. Purpose.

The purpose of this rule is to establish consistent requirements for all sources required to install a continuous monitoring system (CMS) and for sources who opt into the continuous emissions monitoring program.

R307-170-2. Authority.

Authority to require continuous emission monitoring devices is found in 19-2-104(1)(c), and authorization for a penalty for rendering inaccurate any monitoring device or method is found in 19-2-115(4). Authority to enforce 40 CFR Part 60 is obtained by its incorporation by reference under R307-210.

R307-170-3. Applicability.

Except as noted in (1) and (2) below, any source required to install a continuous monitoring system to determine emissions to the atmosphere or to measure control equipment efficiency is subject to R307-170.

(1) Any source subject to 40 CFR Part 60 as incorporated by R307-210, Standards of Performance for New Sources, is not subject to R307-170-6, Minimum Monitoring Requirements for Specific Sources.

(2) Any source required by an approval order issued under R307-401 to operate a continuous monitoring system to satisfy the requirements of R307-150, Periodic Reports of Emissions and Availability of Information, is not subject to R307-170-9(7), Excess Emission Report.

R307-170-4. Definitions.

The following additional definitions apply to R307-170.

"Accuracy" means the difference between a continuous monitoring system response and the results of an applicable EPA reference method obtained over the same sampling time.

"Averaging Period" means that period of time over which a pollutant or opacity is averaged to demonstrate compliance to an emission limitation or standard.

"Block Averages" means the total time expressed in fractions of hours over which emission data is collected and averaged.

"Calibration Drift" (zero drift and span drift) means the value obtained by subtracting the known standard or reference value from the raw response of the continuous monitoring system.

"Channel" means the pollutant, diluent, or opacity to be monitored.

"CMS Information" means the identifying information for each continuous monitoring system a source is required to install.

"Computer Enhancement" means computerized correction of a monitor's zero drift and span drift to reflect actual emission concentrations and opacity.

"Continuous Emission Monitoring System" (CEMS) means all equipment required to determine gaseous emission rates and to record the resulting data.

"Continuous Monitoring System" (CMS) means all equipment required to determine gaseous emission rates or opacity and to record the data.

"Continuous Opacity Monitoring System" means all equipment required to determine opacity and data recording.

"Cylinder Gas Audit" means an alternative relative accuracy test of a continuous emission monitoring system to determine its precision using gases certified by or traceable to National Institute of Standards and Technology (NIST) in the ranges specified in 40 CFR 60, Appendix F.

"Description Report" means a short but accurate description of events that caused continuous monitoring system irregularities or excess emissions that occurred during the reporting period submitted in the state electronic data report.

"Excess Emission Report" means a report within the state electronic data report that documents the date, time, and magnitude of each excess emission episode occurring during the reporting period.

"Excess Emissions" means the amount by which recorded emissions exceed those allowed by approval orders, operating permits, the state implementation plan, or any other provision of R307.

"Monitor" means the equipment in a continuous monitoring system that analyzes concentration or opacity and generates an electronic signal that is sent to a recording device.

"Monitor Availability" means any period in which both the source of emissions and the continuous monitoring system are operating and the minimum frequency of data capture occurred as required in 40 CFR 60.13.

"Monitor Unavailability" means any period in which the source of emissions is operating and the continuous monitoring system is:

a. not operating or minimum data capture did not occur,

b. not generating data, not recording data, or data is lost, or

c. out-of-control in the case of a continuous emissions monitor used for continuous compliance purposes.

"New Source Performance Standards" (NSPS) means 40 CFR 60, Standards of Performance for New Stationary Sources, incorporated by reference at R307-210.

"Operations Report" means the report of all information required under 40 CFR 60 for utilities and fossil fuel fired boilers.

"Performance Specification" means the operational tolerances for a continuous monitoring system as outlined in 40 CFR 60, Appendix B.

"Precision" means the difference between a continuous monitoring system response and the known concentration of a calibration gas or neutral density filter.

"Quality Assurance Calibrations" means calibrations, drift adjustments, and preventive maintenance activities on a continuous monitoring system.

"Raw Continuous Monitoring System Response" means a continuous monitoring system's uncorrected response used to determine calibration drift.

"Relative Accuracy Audit" means an alternative relative accuracy test procedure outlined in 40 CFR 60, Appendix F, which is used to correlate continuous emission monitoring system data to simultaneously collected reference method test data, as outlined in 40 CFR Part 60, Appendix A, using no fewer than three reference method test runs.

"Relative Accuracy Test Audit" means the primary method of determining the correlation of continuous emissions monitoring system data to simultaneously collected reference method test data, using no fewer than nine reference method test runs conducted as outlined in 40 CFR 60, Appendix A.

"State Electronic Data Report" (SEDR) means the sum total of a source's monitoring activities that occurred during a reporting period.

"Summary Report" means the summary of all monitor and excess emission information that occurred during a reporting period.

"Tamper" means knowingly:

a. to make a false statement, representation, or certification in any application, report, record, plan, or other document filed or required to be maintained under R307-170, or

b. to render inaccurate any continuous monitoring system or device or any method required to maintain the accuracy of the continuous monitoring system or device.

"Valid Monitoring Data" means data collected by an accurately functioning continuous monitoring system while any

installation monitored by the continuous monitoring system is in operation.

R307-170-5. General Requirements.

(1) Each source required to operate a continuous monitoring system is subject to the requirements of 40 CFR 60.13 (d) through (j), except as follows:

(a) When minimum emission data points are collected by the continuous monitoring system as required in 40 CFR 60.13 or applicable subparts, quality assurance calibration and maintenance activities shall not count against monitor availability.

(b) A monitor's unavailability due to calibration checks, zero and span checks, or adjustments required in 40 CFR 60.13 or R307-170 will not be considered a violation of R307-170.

(c) Monitor unavailability due to continuous monitoring system breakdowns will not be considered a monitor unavailability violation provided that the owner or operator demonstrates that the malfunction was unavoidable and was repaired expeditiously.

(d) To supplement continuous monitor data, a source with minimum continuous monitoring system data collection requirements may conduct applicable reference method tests outlined in 40 CFR 60, Appendix A, or as directed in the source's applicable Subpart of the New Source Performance Standards.

(2) Each source shall monitor and record all emissions data during all phases of source operations, including start-ups, shutdowns, and process malfunctions.

(3) Each source operating a continuous emissions monitoring system for compliance determination shall document each out-of-control period in the state electronic data report.

(4) Each continuous monitoring system subject to R307-170 shall be installed, operated, maintained, and calibrated in accordance with applicable performance specifications found in 40 CFR 60 Appendix B and Appendix F.

(5) Each continuous emissions monitoring system shall be configured so that calibration gas can be introduced at or as near to the probe inlet as possible. Each source shall conduct daily calibration zero drift and span drift checks and cylinder gas audits by flowing calibration gases at the probe inlet, or as near to the probe inlet as possible. Daily calibration drift checks and quarterly cylinder gas audit data shall be recorded by the continuous emissions monitoring system electronically to a strip chart recorder, data logger, or data recording devices.

(6) No person shall tamper with a continuous monitoring system.

(7) Any source that constructs two or more emission point sources that may interfere with visible emissions observations shall install a continuous opacity monitor to show compliance with visible emission limitations on each obstructed stack, duct or vent that has a visible emission limitation.

R307-170-6. Minimum Monitoring Requirements for Specific Sources.

(1) Fossil Fuel Fired Steam Generators.

(a) A continuous monitoring system for the measurement of opacity shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour for each boiler except where:

(i) natural gas or oil or a mixture of natural gas and oil is the only fuel burned,

(ii) the source is able to comply with the applicable particulate matter and opacity regulations without using particulate matter collection equipment, and

(iii) the source has never been found through any administrative or judicial proceeding to be in violation of any visible emission standard or requirements.

(b) A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour heat input which has installed sulfur dioxide pollution control equipment.

(c) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated on fossil fuel fired steam generators of greater than 1000 million BTU per hour heat input when such facility is located in an Air Quality Control Region where the executive secretary has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standards, unless the source owner or operator demonstrates during source compliance tests as required by the executive secretary that such a source emits nitrogen oxides at levels 30 percent or more below the emission standard.

(d) A continuous monitoring system for the measurement of percent oxygen or carbon dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(2) Nitric Acid Plants.

Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100 percent acid, and located in an Air Quality Control Region where the Executive Secretary has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standard, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of nitrogen oxides for each nitric acid producing installation.

(3) Sulfuric Acid Plants - Burning and Production.

Each sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of sulfur dioxide for each sulfuric acid producing installation within such plant.

(4) Petroleum Refineries - Fluid Bed Catalytic Cracking Unit Catalyst Regenerator.

Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity.

R307-170-7. Performance Specification Audits.

(1) Quarterly Audits.

Unless otherwise stipulated for sources subject to the Acid Rain Provisions of the Clean Air Act in 40 CFR Part 75 CEM, Appendix A, Section 6.2, effective as of the date referenced in R307-101-3, each continuous emissions monitoring system shall be audited at least once each calendar quarter. Successive quarterly audits shall be conducted at least two months apart. A relative accuracy test audit shall be conducted at least once every four calendar quarters as described in the applicable performance specification of 40 CFR 60, Appendix B.

(a) Relative accuracy shall be determined in units of the applicable emission limit.

(b) An alternative relative accuracy test (cylinder gas audit or relative accuracy audit) may be conducted in three of the four calendar quarters in place of conducting a relative accuracy test audit, but in no more than three quarters in succession.

(c) Each range of a dual range monitor shall be audited using an alternative relative accuracy audit procedure.

(d) Minor deviations from the reference method test must be submitted to the executive secretary for approval.

(e) Performance specification tests and audits shall be conducted so that the entire continuous monitoring system is concurrently tested.

(2) Notification.

The source shall notify the executive secretary of its intention to conduct a relative accuracy test audit by submitting a pretest protocol or by scheduling a pretest conference if directed to do so by the executive secretary. Each source shall notify the executive secretary no less than 45 days prior to testing.

(3) Audit Procedure.

A source may stop a relative accuracy test audit before the commencement of the fourth run to perform repairs or adjustments on the continuous emissions monitoring system. If the audit is stopped to make repairs or adjustments, the audit must be started again from the beginning. If the fourth test run is started, testing shall be conducted until the completion of the ninth acceptable test run or the source may declare the monitor out-of-control and stop the test. If the system does not meet its applicable relative accuracy performance specification outlined in 40 CFR 60, Appendix B, its data may not be used in determining emissions rates until the system is successfully recertified.

(4) Performance Specification Tests.

(a) Except as listed in (b) below, all reference method testing equipment shall be totally independent of the continuous emissions monitoring system equipment undergoing a performance specification test.

(b) Reference method tests conducted on fuel gas lines, vapor recovery units, or other equipment as approved by the executive secretary may use a common probe, when the reference method sample line ties into the continuous emission monitor's probe or sample line as close to the probe inlet as possible.

(5) Submittal of Audit Results.

The source shall submit all relative accuracy performance specification test reports to the executive secretary no later than 60 days after completion of the test.

(a) Test reports shall include all raw reference method calibration data, raw reference method emission data with date and time stamps, and raw source continuous monitoring data with date and time stamps. All data shall be reported in concentration and units of the applicable emission limit.

(b) Relative accuracy performance specification test or audit reports shall include the company name, plant manager's name, mailing address, phone number, environmental contact's name, the monitor manufacturer, the model and serial number, the monitor range, and its location.

(6) Daily Drift Test.

Each source operating a continuous monitoring system shall conduct a daily zero and span calibration drift test as required in 40 CFR 60.13(d). The zero and span drifts shall be determined by using raw continuous monitoring system responses to a known value of the reference standard. Computer enhancements may be used to correct continuous monitoring system emission data that has been altered by monitor drift, but may not be used to determine daily zero and span drift.

(a) A monitor used for compliance that fails the daily calibration drift test as outlined in 40 CFR 60 Appendix F, Subpart 4, shall be declared out-of-control, and the out-of-control period shall be documented in the state electronic data report. The source shall make corrective adjustments to the system promptly. Continuous emission monitoring system data collected during the out-of-control period may not be used for monitor availability.

(b) Each source operating a continuous monitoring system that exceeds the calibration drift limit as outlined in 40 CFR 60 and the applicable performance specification shall make corrective adjustments promptly.

R307-170-8. Recordkeeping.

Each source subject to this rule shall maintain a file of all:

(1) parameters for each continuous monitoring system and monitoring device,

(2) performance test measurements,

(3) continuous monitoring system performance evaluations,

(4) continuous monitoring system or monitoring device calibration checks,

(5) adjustments and maintenance conducted on these systems or devices, and

(6) all other information required by this rule. Information shall be recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, and shall be available to the executive secretary at any time.

R307-170-9. State Electronic Data Report.

(1) General Reporting Requirements.

(a) Each source required to install a continuous monitoring system shall submit the state electronic data report including all information specified in (2) through (10) below. Each source shall submit a complete, unmodified report in an electronic ASCII format specified by the executive secretary.

(b) Partial Reports.

(i) If the total duration of excess emissions during the reporting period is less than one percent of the total operating time and the continuous monitoring system downtime is less than five percent of the total operating time, only the summary portion of the state electronic data report need be submitted.

(ii) If the total excess emission during the reporting period is equal to or greater than one percent of the total operating time, or the total monitored downtime is equal to or greater than five percent of the total operating time, the total state electronic data report shall be submitted.

(iii) Each source required to install a continuous monitoring system for the sole purpose of generating emissions inventory data is not required to submit the excess emission report required by (7) below or the excess emission summary required by (6)(b) below, unless otherwise directed by the executive secretary.

(c) Frequency of Reporting. Each source subject to this rule shall submit a report to the executive secretary with the following frequency:

(i) Each source shall submit a report quarterly, if required by the executive secretary or by 40 CFR Part 60, or if the continuous monitoring system data is used for compliance determination. Each source submitting quarterly reports shall submit them by January 30, April 30, July 30, and October 30 for the quarter ending 30 days earlier.

(ii) Any source subject to this rule and not required to submit a quarterly report shall submit its report semiannually by January 30 and July 30 for the six month period ending 30 days earlier.

(iii) The executive secretary may require any source to submit all emission data generated on a quarterly basis.

(2) Source Information.

The report shall contain source information including the company name, name of manager or responsible official, mailing address, AIRS number, phone number, environmental contact name, each source required to install a monitoring system, quarter or quarters covered by the report, year, and the operating time for each source.

(3) Continuous Monitoring System Information.

The report shall identify each channel, manufacturer, model number, serial number, monitor span, installation dates, and whether the monitor is located in the stack or duct.

(4) Monitor Availability Reporting.

(a) The report shall include all periods that the pollutant concentration exceeded the span of the continuous monitoring system by source, channel, start date and time, and end date and

time.

(b) Each continuous monitoring system outage or malfunction which occurs during source operation shall be reported by source, channel, start date and time, and end date and time.

(c) When it becomes necessary to supplement continuous monitoring data to meet the minimum data requirements, the source shall use applicable reference methods and procedures as outlined in 40 CFR 60, or as stipulated in the source's applicable Subpart of the New Source Performance Standards. Supplemental data shall be reported by source, channel, start date and time, and end date and time, and may be used to offset monitor unavailability.

(d) Monitor modifications shall be reported by source, channel, date of modification, whether a support document was submitted, and the reason for the modification.

(5) Continuous Monitoring System Performance Specification Audits.

(a) Each source shall submit the results of each relative accuracy test audit, relative accuracy audit and cylinder gas audit. Each source that reports linearity tests may omit reporting cylinder gas audits.

(b) Each relative accuracy test audit shall be reported by source, channel, date of the most current relative accuracy test audit, date of the preceding relative accuracy test audit, number of months between relative accuracy test audits, units of applicable standard, average continuous emissions monitor response during testing, average reference method value, relative accuracy, and whether the continuous emissions monitor passed or failed the test or audit.

(c) A relative accuracy audit shall be reported by source, channel, date of audit, continuous emissions monitor response, relative accuracy audit response, percent precision, pass or fail results, and whether the monitor range is high or low.

(d) Cylinder gas audit and linearity tests shall be reported by source, channel, date, audit point number, cylinder identification, cylinder expiration date, type of certification, units of measurement, continuous emissions monitor response, cylinder concentration, percent precision, pass or fail results, and whether the monitor range is high or low.

(6) Summary reports.

(a) Each source shall summarize and report each continuous monitoring system outage that occurred during the reporting period in the continuous monitoring system performance summary report. The summary must include the source, channels, monitor downtime as a percent of the total source operating hours, total monitor downtime, hours of monitor malfunction, hours of non-monitor malfunction, hours of quality assurance calibrations, and hours of other known and unknown causes of monitor downtime. A source operating a backup continuous monitoring system must account for monitor unavailability only when accurate emission data are not being collected by either continuous monitoring system.

(b) The summary report shall contain a summary of excess emissions that occurred during the reporting period unless the continuous monitoring system was installed to document compliance with an emission cap or to generate data for annual emissions inventories.

(i) Each source with multiple emission limitations per channel being monitored shall summarize excess emissions for each emission limitation.

(ii) The emission summary must include the source, channels, total hours of excess emissions as a percent of the total source operating hours, hours of start-up and shutdown, hours of control equipments problems, hours of process problems, hours of other known and unknown causes, emission limitation, units of measurement, and emission limitation averaging period.

(c) When no continuous monitoring unavailability or excess emissions have occurred, this shall be documented by placing a zero under each appropriate heading.

(7) Excess Emissions Report.

(a) The magnitude and duration of all excess emissions shall be reported on an hourly basis in the excess emissions report.

(i) The duration of excess emissions based on block averages shall be reported in terms of hours over which the emissions were averaged. Each source that averages opacity shall average it over a six-minute block and shall report the duration of excess opacity in tenths of an hour. Sources using a rolling average shall report the duration of excess emissions in terms of the number of hours being rolled into the averaging period.

(ii) Sources with multiple emission limitations per channel being monitored shall report the magnitude of excess emissions for each emission limitation.

(b) Each period of excess emissions that occurs shall be reported. Each episode of excess emission shall be accompanied with a reason code and action code that links the excess emission to a specific description, which describes the events of the episode.

(8) Operations Report.

Each source operating fossil fuel fired steam generators subject to 40 CFR 60, Standards of Performance for New Stationary Sources, shall submit an operations report.

(9) Signed Statement.

(a) Each source shall submit a signed statement acknowledging under penalties of law that all information contained in the report is truthful and accurate, and is a complete record of all monitoring related events that occurred during the reporting period. In addition, each source with an operating permit issued under R307-415 shall submit the signed statement required in R307-415-5d.

(10) Descriptions.

Each source shall submit a narrative description explaining each event of monitor unavailability or excess emissions. Each description also shall be accompanied with reason codes and action codes that will link descriptions to events reported in the monitoring information and excess emission report.

KEY: air pollution, monitoring, continuous monitoring

February 8, 2008	**19-2-101**
Notice of Continuation February 8, 2008	**19-2-104(1)(c)**
	19-2-115(3)(b)
	40 CFR 60

R307. Environmental Quality, Air Quality.
R307-202. Emission Standards: General Burning.
R307-202-1. Definitions and Exclusions.

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

R307-202-2. Community Waste Disposal.

No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

R307-202-3. General Prohibitions.

No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of R307-202-4 and 5.

R307-202-4. Permissible Burning - Without Permit.

When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

(1) in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

(2) campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

(3) in indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2;

(4) properly operated industrial flares for combustion of flammable gases; and

(5) burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

R307-202-5. Permissible Burning - With Permit.

(1) Open burning is authorized by the issuance of a permit as specified in (3) below when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

(2) Individual permits for the types of burning listed in (3) below may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

(3) Types of burning for which a permit may be granted are:

(a) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(b) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other materials which can cause severe air pollution are not used to start fires or keep fires burning;

(c) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(d) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(e) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(i) in any area of the state, the local county fire marshal has established a 30 day period between March 1 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshal has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(ii) such burning occurs during the period established by the local county fire marshal;

(iii) materials to be burned are thoroughly dry;

(iv) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

(4) The Board may grant a permit for types of open burning not specified in (3) above on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

R307-202-6. Special Conditions.

Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

KEY: air pollution, open burning*, fire marshal*
July 15, 1999 **19-2-104**
Notice of Continuation February 8, 2008 **11-7-1(2)(a)**
65A-8-9

R307. Environmental Quality, Air Quality.
R307-203. Emission Standards: Sulfur Content of Fuels.
R307-203-1. Commercial and Industrial Sources.

(1) Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

(a) In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: weight percent sulfur, gross heating value (btu per unit volume), and density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

(b) In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

(c) All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with (a) and (b) above.

(d) Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

(e) If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

(f) Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-203, or that the alternative test method is equivalent to that required by R307-203. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

(2) Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of (1) above. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of (1) above. Control apparatus to continuously prevent the emission of sulfur greater than provided by (1) above must be specified in the application for an exemption.

(3) In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with (1) above. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from (1) above are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

(4) Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

(a) For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

(b) For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

(c) For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

R307-203-2. Sulfur and Ash Content of Coal for Residential Use.

(1) After July 1, 1987, no person shall sell, distribute, use or make available for use any coal or coal containing fuel for direct space heating in residential solid fuel burning devices and fireplaces which exceeds the following limitations as measured by the American Society for Testing Materials Methods:

(a) 1.0 pound sulfur per million BTU's, and

(b) 12% volatile ash content.

(2) Any person selling coal or coal containing fuel used for direct residential space heating within the State of Utah shall provide written documentation to the coal consumer of the sulfur and volatile ash content of the coal being purchased.

R307-203-3. Emissions Standards.

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

KEY: air pollution, fuel composition*, fuel oil*
September 15, 1998 **19-2-104**
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-220. Emission Standards: Plan for Designated Facilities.
R307-220-1. Incorporation by Reference.

Pursuant to 42 U.S.C. 7411(d), the Federal Clean Air Act Section 111(d), the following sections hereby incorporate by reference the Utah plan for designated facilities. Copies of the plan are available at the Division of Air Quality and the Division of Administrative Rules.

R307-220-2. Section I, Municipal Solid Waste Landfills.

Section I, Municipal Solid Waste Landfills, as most recently adopted by the Air Quality Board on September 3, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators.

Section II, Hospital, Medical, Infectious Waste Incinerators, as most recently adopted by the Air Quality Board on November 12, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-4. Section III, Small Municipal Waste Combustion Units.

Section III, Small Municipal Waste Combustion Units, as most recently adopted by the Air Quality Board on October 2, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-5. Section IV, Coal-Fired Electric Generating Units.

Section IV, Coal-Fired Electric Generating Units, as most recently adopted by the Air Quality Board on March 14, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, landfills, incinerators, electric generating units
May 9, 2007 19-2-104(3)(q)
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills.
R307-221-1. Purpose and Applicability.

(1) To meet the requirements of 42 U.S.C. 7411(d) and 40 CFR 60.30c through 60.36c, and to meet the requirements of the plan for Municipal Solid Waste Landfills, incorporated by reference at R307-220-2, R307-221 regulates emissions from existing municipal solid waste landfills.

(2) R307-221 applies to each existing municipal solid waste landfill for which construction, reconstruction or modification was commenced before May 30, 1991. Municipal solid waste landfills which closed prior to November 8, 1987, are not subject to R307-221. Physical or operational changes made solely to comply with the plan for Municipal Solid Waste Landfills are not considered a modification or reconstruction and do not subject the landfill to the requirements of 40 CFR 60 Subpart WWW.

(3) Municipal solid waste landfills with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) are subject to the emission inventory requirements of R307-150.

R307-221-2. Definitions and References.

Definitions found in 40 CFR Part 60.751, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the exclusion of the definitions of closed landfill, design capacity, and NMOC. The following additional definitions apply to R307-221:

"Closed Landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed. A landfill is considered closed after meeting the criteria specified in Subsection R315-301-2(13).

"Design Capacity" means the maximum amount of solid waste a landfill can accept, as specified in an operating permit issued under R307-415 or a solid waste permit issued under Rule R315-310.

"Modification" means an increase in the landfill design capacity through a physical or operational change, as reported in the initial Design Capacity Report.

"NMOC" means nonmethane organic compounds.

R307-221-3. Emission Restrictions.

(1) The requirements found in 40 CFR 60.752 through 60.759, including Appendix A, effective as of date referenced in R307-101-3, are adopted and incorporated by reference, with the following exceptions and the substitutions listed in R307-221-3(2) through (5):

(a) Substitute "executive secretary" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State, local or Tribal agency."

(c) Substitute "R307-221" for all references to "This subpart" or "this part."

(d) Substitute "40 CFR" for all references to "This title."

(e) Substitute "Title 19, Chapter 6" for all references to "RCRA" or the "Resource Conservation and Recovery Act," 42 U.S.C. 6921, et seq.

(f) Substitute "Rules R315-301 through 320" for all references to 40 CFR 258.

(2) Instead of 40 CFR 60.757(a)(1),substitute the following: The initial design capacity report must be submitted within 90 days after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(3) Instead of 40 CFR 60.757(a)(3), substitute the following: An amended design capacity report shall be submitted to the Executive Secretary providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report shall be submitted within 90 days of the earliest of the following events:

(a) the issuance of an amended operating permit;

(b) submittal of application for a solid waste permit under R315-310; or

(c) the change in operating procedures which will result in an increase in design capacity.

(4) Instead of 40 CFR 60.757(b)(1)(i), substitute the following: The initial emission rate report for nonmethane organic compounds must be submitted within 90 days after EPA approval of the state plan incorporated by reference under R307-220-2.

(5) Instead of 40 CFR 60.752(b)(2)(ii)(B)(2), substitute the following: The liner shall be installed with liners on the bottom and all sides in all areas in which gas is to be collected, or as approved by the executive secretary. The liner shall meet the requirements of Subsection R315-303-3(3).

R307-221-4. Control Device Specifications.

Control devices meeting the following requirements, shall be used to control collected municipal solid waste landfill emissions:

(1) an open flare designed and operated in accordance with the parameters established in Section 40 CFR Part 60.18, effective as of date referenced in R307-101-3, which is adopted and incorporated by reference into this rule; or

(2) a control system designed and operated to reduce nonmethane organic compounds by 98 weight percent; or

(3) an enclosed combustor designed and operated to reduce the outlet nonmethane organic compounds concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

R307-221-5. Compliance Schedule.

(1) Except as provided in (2) below, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the emission standards established under R307-221-3(1) shall be accomplished within 30 months after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(2) For each existing municipal solid waste landfill meeting the conditions in R307-221-1(2) whose emission rate for nonmethane organic compounds is less than 50 megagrams (55 tons) per year on the date EPA approves the state plan incorporated by reference under R307-220-2, installation of collection and control systems capable of meeting emissions standards in R307-221-1(2) shall be accomplished within 30 months of the date when the landfill has an emission rate of nonmethane organic compounds of 50 megagrams (55 tons) per year or more.

(3) The owner or operator of each landfill with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) shall submit by April 1, 1997, an inventory of nonmethane organic compounds. The calculations for this inventory shall use emission factors which obtain the most accurate representation of emissions from the landfill.

(4) The owner or operator of a landfill requiring controls shall notify the executive secretary of the awarding of contracts for the construction of the collection and control system or the order to purchase components for the system. This notification shall be submitted within 18 months after reporting a nonmethane organic compound emission equal to or greater than 50 megagrams (55 tons) per year.

(5) The owner or operator shall notify the executive

secretary of the initiation of construction or installation of the collection and control system. This notification shall be submitted to the executive secretary within 22 months after reporting a nonmethane organic compound emission rate equal to or greater than 50 megagrams (55 tons) per year. Landfills with commingled asbestos and municipal solid waste may include the submittals required under R307-214-1 with this notice.

KEY: air pollution, municipal landfills
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste.
R307-222-1. Purpose and Applicability.

(1) R307-222 regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of them. The purpose of R307-222 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans from incinerators burning hospital, medical or infectious waste. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, subpart Ce, published at 62 FR 48348, September 15, 1997, and by the Plan for Incinerators for Hospital, Medical, and Infectious Waste which is incorporated by reference at R307-220-3.

(2) R307-222 applies to each incinerator for hospital, medical, or infectious waste or any combination of them for which construction was commenced on or before June 20, 1996, except as set forth below.

(a) A combustor is not subject to R307-222 during periods when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned, provided the owner or operator of the combustor:

(i) Notifies the executive secretary of an exemption claim; and

(ii) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned.

(b) Any co-fired combustor is not subject to this subpart if the owner or operator of the co-fired combustor:

(i) Notifies the executive secretary of an exemption claim;

(ii) Provides an estimate of the relative weight of wastes to be combusted, including hospital, medical or infectious waste or any combination of them, and other fuels and wastes; and

(iii) Keeps records on a calendar quarter basis of the weight of hospital, medical, or infectious waste or any combination of them which was combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under R315-306 is not subject to R307-222.

(d) Any combustor which meets the applicability requirements under subpart Cb, Ea, or Eb of 40 CFR Part 60 is not subject to R307-222.

(e) Any pyrolysis unit as defined in 40 CFR 60.51c is not subject to R307-222.

(f) Any cement kiln firing hospital, medical, or infectious waste or any combination of them is not subject to R307-223.

(g) Physical or operational changes made to an existing hospital, medical or infectious waste incinerator unit solely for the purpose of complying with emission guidelines under R307-223 are not considered a modification and do not result in an existing hospital, medical or infectious or any combination waste incinerator unit becoming subject to the provisions of R307-210.

(3) Any facility subject to R307-222 also is required to obtain an operating permit under R307-415 no later than September 15, 2000.

R307-222-2. Definitions and References.

(1) The following definitions apply only to R307-222. Definitions found in 40 CFR 60.31e, effective as of the date referenced in R307-101-3, and 40 CFR 60.51c, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "executive secretary" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State agency" or "State regulatory agency."

(c) Substitute "Rule R307-222" for all references to "this subpart."

(d) Substitute "40 CFR Part 60" for all references to "this part."

(e) Substitute "40 CFR" for all references to "This title."

R307-222-3. All Incinerators.

Each incinerator subject to R307-222 must comply with the requirements of 40 CFR 60.52c(b) for emission limits, 40 CFR 60.53c for operator training and qualification, 40 CFR 60.55c for a waste management plan, 40 CFR 60.58c(b) excluding (b)(2)(ii) and (b)(7) for recordkeeping, and 40 CFR 60.58c(c) through (f) for reporting. These provisions, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-222-4. Large, Medium and Urban Small Incinerators.

Except as provided in Section R307-222-5, each incinerator must comply with the emissions limitations of Table 1 in 40 CFR Part 60, Subpart Ce, 40 CFR 60.57c, and 40 CFR 60.56c excluding 56c(b)(12) and 56c(c)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

R307-222-5. Small Rural Incinerators.

(1) A small rural incinerator is a small incinerator as defined in Section R307-222-2 that:

(a) is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area listed in OMB bulletin No. 93-17 entitled "Revised Statistical definitions for Metropolitan Areas," June 30, 1993; and

(b) burns less than 2000 pounds per week of hospital, medical or infectious waste or any combination of them. The 2000 pounds per week limitation does not apply during performance tests.

(2) Each small rural incinerator must comply with the emission limits of Table 2 in 40 CFR Part 60, Subpart Ce, effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(3) Each small incinerator must comply with the inspection requirements of 40 CFR 60.36e(a)(1) and (a)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference. An inspection meeting these requirements must be conducted within one year after federal approval of the Plan incorporated by reference in R307-220-3, and annually no more than 12 months following the previous annual inspection.

(4) Each small incinerator must comply with the compliance and performance testing requirements of 40 CFR 60.37e(b)(1) through (b)(5), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(5) Each small incinerator must comply with the monitoring requirements of 40 CFR 60.37e(d)(1) through (d)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(6) Each small incinerator must comply with the recordkeeping and reporting requirements of 40 CFR 60.38e(b)(1) and (b)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

KEY: air pollution, hospitals, medical incinerator, infectious waste
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units.
R307-223-1. Purpose and Applicability.

(1) R307-223 regulates emissions from existing small municipal waste combustion units. The purpose of R307-223 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and furans from small municipal waste combustion units. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, subpart BBBB, and by the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(2) R307-223 applies to each existing small municipal waste combustion unit that has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel and commenced construction on or before August 30, 1999. A list of facilities not subject to R307-223 is found in 40 CFR 60.1555(a) through (k), effective as of the date referenced in R307-101-3, which is hereby adopted and incorporated by reference.

(3) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4, then R307-210 does not apply to that unit. Such changes do not constitute modifications or reconstructions under R307-210.

(4) The owner or operator of any source subject to R307-223 also is required to submit an application for an operating permit under R307-415.

R307-223-2. Definitions and Equations.

(1) The following definitions apply only to R307-223. Definitions found in 40 CFR 60.1940, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "executive secretary" for all federal regulation references to "Administrator" or "EPA Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State," "State agency" or "State regulatory agency."

(c) "State plan" means the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(d) "You" means the owner or operator of a small municipal waste combustion unit.

(e) Substitute "Rule R307-223" for all references to "this subpart."

(f) Substitute "40 CFR Part 60" for all references to "this part."

(g) Substitute "40 CFR" for all references to "This title."

(2) Equations found in 40 CFR 60.1935, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-223-3. Requirements.

(1) Each incinerator owner or operator subject to R307-223 must comply with the requirements of 40 CFR 60.1540 and 60.1585 through 60.1905, and with the requirements and schedules set forth in Tables 2 through 8 that are found following 40 CFR 60.1940 for operator training and certification, operating requirements, emission limits, continuous emission monitoring, stack testing, other monitoring requirements, record keeping, and reporting. These provisions and table, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference with the exceptions listed below.

(a) In 40 CFR 60.1650(a), delete "or state."

(b) In 40 CFR 60.1675(a), delete "or a current provisional operator certification from your State certification program."

(c) In 40 CFR 1675 (c), change "three" to "two," and delete 40 CFR 1675(c)(3).

(2) Compliance dates. Each incinerator must be in compliance with the dates in Section III of the Plan.

KEY: air pollution, municipal waste incinerator, waste to energy plant
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units.
R307-224-1. Purpose and Applicability.

(1) Nationwide reductions of mercury (Hg) emissions from certain coal-fired electric generating units are required by 40 CFR Part 60, subparts B and HHHH, in effect on June 9, 2006, and by the Designated Facilities Plan for coal-fired electric generating units, incorporated by reference at R307-220-5.

(2) R307-224 regulates mercury emissions from any coal-fired electric generating unit as defined in 40 CFR 60.24.

R307-224-2. Emission Guidelines and Compliance Times for Coal-Fired Electric Generating Units.

(1) The following sections of 40 CFR Part 60, subpart HHHH, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference into these rules:

(a) Sections 60.4101 through 60.4124;

(b) Sections 60.4142 paragraph (c)(2) through paragraph (c)(4);

(c) Sections 60.4150 through 60.4176.

KEY: air pollution, electric generating unit, mercury
February 8, 2008 19-2-104(3)(q)
Notice of Continuation February 8, 2008 40 CFR Part 60, Subparts Da and HHHH

R307. Environmental Quality, Air Quality.
R307-250. Western Backstop Sulfur Dioxide Trading Program.
R307-250-1. Purpose.

This rule implements the Western Backstop (WEB) Sulfur Dioxide Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309, and Section XX.E of the State Implementation Plan for Regional Haze, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under R307-110-28.

R307-250-2. Definitions.

The following additional definitions apply to R307-250:

"Account Certificate of Representation" or "Certificate" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account. "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

"Actual Emissions" means total annual sulfur dioxide emissions determined in accordance with R307-250-9 or determined in accordance with the Sulfur Dioxide Milestone Inventory requirements of R307-150 for sources that are not subject to R307-250-9.

"Allocate" means to assign allowances to a WEB source in accordance with SIP Section XX.E.3.a through c.

"Allowance" means the limited authorization under the WEB Trading Program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by R307-250.

"Allowance Limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source under R307-250-12 on the allowance transfer deadline for each control period.

"Allowance Tracking System" means the system where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

"Allowance Tracking System account" means an account in the allowance tracking system established for purposes of recording, holding, transferring, and deducting allowances.

"Allowance Transfer Deadline" means the deadline established in R307-250-10(2) when allowance transfers must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

"Compliance Account" means an account established in the allowance tracking system under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

"Compliance Certification" means a submission to the executive secretary by the Account Representative as required under R307-250-12(2) to report a WEB source's compliance or noncompliance with R307-250.

"Control Period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

"Emissions Tracking Database" means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with R307-250 are tracked to determine compliance with allowance limitations.

"Existing Source" means a stationary source that commenced operation before the Program Trigger Date.

"General Account" means an account established in the allowance tracking system under R307-250-8 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

"Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in SIP Section XX.E.1.

"New WEB Source" means a WEB source that commenced operation on or after the program trigger date.

"New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of SIP Section XX.E.3.c.

"Program trigger date" means the date that the executive secretary determines that the WEB Trading Program has been triggered in accordance with the provisions of SIP Section XX.E.1.c.

"Program trigger years" means the years shown in SIP Section XX.E.1.a, Table 3, column 3 for the applicable milestone if the WEB Trading Program is triggered as described in SIP Section XX.E.1.

"Retired source" means a WEB source that has received a retired source exemption as provided in R307-250-4(4).

"Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with R307-250-7(2).

"SIP Section XX.E" means Section XX, Part E of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program." SIP Section XX, Regional Haze, is incorporated by reference under R307-110-28.

"Special Reserve Compliance Account" means an account established in the allowance tracking system under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with R307-250-9(1)(b).

"Sulfur Dioxide emitting unit" means any equipment that is located at a WEB source and that emits sulfur dioxide.

"Submit" means sent to the executive secretary or the Tracking system Administrator under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

"Ton" means 2000 pounds and any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

"Tracking System Administrator" or "TSA" means the person designated by the executive secretary as the administrator of the allowance tracking system and the emission tracking database.

"WEB Source" means a stationary source that meets the applicability requirements of R307-250-4.

"WEB Trading Program" means R307-250, the Western Backstop Trading Program, triggered as a backstop in accordance with the provisions in SIP Section XX.E, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

R307-250-3. WEB Trading Program Trigger.

(1) Except as provided in (2) below, R307-250 shall become effective on the program trigger date that is established in accordance with the procedures in SIP Section XX.E.1.c.

(2) Special Penalty Provisions for the Year 2018, R307-250-13, shall become effective on January 1, 2018, and shall remain effective until the requirements of R307-250-13 have been met.

R307-250-4. WEB Trading Program Applicability.

(1) General Applicability. R307-250 applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) through (c) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(b) All stationary sources not meeting the criteria of (a) that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is subject to R307-250 unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(c) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(2) The executive secretary may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a stationary source defined in (1)(b) above that has not previously met the applicability requirements of (1) is not subject to R307-250 if the stationary source had actual sulfur dioxide emissions of 100 tons or more in a single year and in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year, and:

(a)(i) the emissions increase was due to a temporary emission increase that was caused by a sudden, infrequent failure of air pollution control equipment, or process equipment, or a failure to operate in a normal or usual manner, and

(ii) the stationary source has corrected the failure of air pollution equipment, process equipment, or process by the time of the executive secretary's determination; or

(b) the stationary source had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in (4) below, once a stationary source is subject to R307-250, it will remain subject to the rule every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all sulfur dioxide emitting units at the source are permanently retired. The application shall contain the following information:

(i) identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) name of account representative;

(iii) description of the status of the WEB source, including the date that the WEB source was permanently retired;

(iv) signed certification that the WEB source is permanently retired and will comply with the requirements of R307-250-4(4); and

(v) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the executive secretary notifies the WEB source that the retired source exemption has been granted.

(c) Responsibilities of Retired Sources.

(i) A retired source shall be exempt from R307-250-9 and R307-250-12, except as provided below.

(ii) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is issued.

(iii) A WEB source shall submit sulfur dioxide emissions reports, as required by R307-250-9, for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of R307-250-12, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(iv) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of this rule.

(d) Resumption of Operations.

(i) Before resuming operation, the retired source must submit registration materials as follows:

(A) If the source is required to obtain an approval order under R307-401 or an operating permit under R307-415 prior to resuming operation, then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted with the notice of intent under R307-401 or the operating permit application required under R307-415;

(B) If the source does not meet the criteria of (A), then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted to the executive secretary at least ninety days prior to resumption of operation.

(ii) The retired source exemption shall automatically expire on the day the retired source resumes operation.

(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the executive secretary for a retired source exemption within ninety days of

the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the TSA.

R307-250-5. Account Representative for WEB Sources.

(1) Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(2) Identification and Certification of an account representative.

(a) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(b) The account representative shall submit to the executive secretary and the TSA a signed and dated certificate that contains the following elements:

(i) identification of the WEB source by plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(iii) a list of owners and operators of the WEB source;

(iv) information to be part of the emission tracking system database that is established in accordance with SIP Section XX.E.3.i. The specific data elements shall be as specified by the the executive secretary to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(v) The following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that the owner and operator each shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the executive secretary regarding the WEB Trading Program."

(c) Upon receipt by the executive secretary of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Each owner and operator shall be bound by any decision or order issued by the executive secretary regarding the WEB Trading Program.

(d) No WEB allowance tracking system account shall be established for the WEB source until the TSA has received a complete Certificate. Once the account is established, all submissions concerning the account, including the deduction or transfer of allowances, shall be made by the account representative.

(3) Responsibilities.

(a) The responsibilities of the account representative include, but are not limited to, the transferring of allowances and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by R307-250, and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the alternate Account Representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the executive secretary and the TSA under R307-250-5(2). The change will be effective upon receipt of such certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

(b) Changes in Owner and Operator.

(i) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(ii) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the executive secretary as if the new owner or operator were included in the list.

R307-250-6. Registration.

(1) Deadlines.

(a) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(c) Any new WEB source shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary prior to commencing operation.

(2) Any allocation, transfer or deduction of allowances to or from the source's compliance account shall not require a revision of the WEB source's operating permit under R307-415.

R307-250-7. Allowance Allocations.

(1) The TSA will record the allowances for each WEB source in the source's compliance account once the allowances are allocated by the executive secretary under SIP Section XX.E.3.a through c. If applicable, the TSA will record a portion of the sulfur dioxide allowances for a WEB source in a special reserve compliance account to account for any

allowances to be held by the source that conducts monitoring in accordance with R307-250-9(1)(b).

(2) The TSA will assign a serial number to each allowance in accordance with SIP Section XX.E.3.f.

(3) All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of R307-250. No provision of the WEB Trading Program or other law should be construed to limit the authority of the executive secretary to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any non-utility WEB source that installs new control technology and that reduces its permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in SIP Section XX.E.3.a(1)(b)(i) or any utility that reduces its permitted annual sulfur dioxide emissions to a level that is below best available control technology may apply to the executive secretary for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2003 and the program trigger year. The application must be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced in this section for a minimum of five years after the early reduction bonus allowance is certified in accordance with SIP Section XX.E.3.a(c). The application for an early reduction bonus allocation must contain the following information:

(a) copies of all approval orders, operating permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source qualifies for an early reduction credit. Approval orders, permits, or enforceable documents must contain monitoring requirements for sulfur dioxide emissions that meet the specifications in R307-250-9.

(b) demonstration that the floor level established for the source in SIP Section XX.E.3.a(1)(b)(i) for non-utilities or best available control technology for utilities was calculated using data that are consistent with monitoring methods specified in R307-250-9(1)(a). If needed, the demonstration shall include a new floor level calculation that is consistent with the monitoring methodology in R307-250-9.

(6) Request for Allowances for New WEB Sources or Modified WEB Sources.

(a) A new WEB source may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. A new WEB source is eligible for an annual floor allocation equal to the lower of the permitted annual sulfur dioxide emission limit for that source, or sulfur dioxide annual emissions calculated based on a level of control equivalent to best available control technology (BACT) and assuming 100 percent utilization of the WEB source, beginning with the first full calendar year of operation.

(b) An existing WEB source that has increased production capacity through a new approval order issued under R307-401 may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. An existing WEB source is eligible for an annual allocation equal to:

(i) the permitted annual sulfur dioxide emission limit for a new unit; or

(ii) the permitted annual sulfur dioxide emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(c) A source that has received a retired source exemption under R307-250-4(4) is not eligible for an allocation from the new source set-aside.

(d) The application for an allocation from the new source set-aside must contain the following:

(i) for a new WEB source or a new unit under R307-250-7(6)(b)(i), documentation of the actual date of the commencement of operation and a copy of the approval order issued under R307-401;

(ii) for an existing WEB source under R307-250-7(6)(b)(ii), documentation of the production capacity of the source before and after the new permit.

R307-250-8. Establishment of Accounts.

(1) Allowance Tracking System Accounts. All WEB sources are required to open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under R307-250-9(1)(b), the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. To open any type of account, an application that contains the following information must be submitted to the TSA:

(a) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative. For a compliance account, the application shall include a copy of the certificatefor the account representative and any alternate as required in R307-250-5(2)(b). For a general account, the application shall include the certificate for the account representative and any alternate as required in (3)(b) below.

(b) the WEB source or organization name;

(c) the type of account to be opened;

(d) identification of the specific units that are monitoring under R307-250-9(1)(b) and that must demonstrate compliance with the allowance limitation in the special reserve compliance account; and

(e) a signed certification of truth and accuracy by the account representative according to R307-250-5(3)(b) for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to (4) below.

(2) Account Representative for General Accounts. For a general account, one account representative must be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The account representative shall submit to the TSA a signed and dated certificate that contains the following elements:

(i) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(ii) the organization name, if applicable;

(iii) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading

Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions."

(c) Upon receipt by the TSA of the complete certificate, the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the executive secretary.

(d) A WEB Allowance Tracking System general account shall not be established until the TSA has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) Changing the Account Representative for General Accounts. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the executive secretary and the TSA under (3)(b) above. The change will take effect upon the receipt of the certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under (1) above shall require a revision of the application.

R307-250-9. Monitoring, Recordkeeping and Reporting.

(1) General Requirements on Monitoring Methods.

(a) For each sulfur dioxide emitting unit at a WEB source the WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(i) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(ii) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, a unit shall use one of the following monitoring methods, as applicable:

(A) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(B) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of 40 CFR 75.19;

(C) one of the optional WEB protocols, if applicable, in Appendix E of State Implementation Plan Section XX, Regional Haze; or

(D) a petition for site-specific monitoring that the source submits for approval by the executive secretary and approval by the U.S. Environmental Protection Agency in accordance with R307-250-9(9).

(iii) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire control period and the account representative certifies in accordance with R307-250-12(2) that these conditions were met.

(b) Notwithstanding (a) above, a WEB source with a unit that meets one of the conditions of (i) below may submit a request to the executive secretary to have the provisions of this subsection (b) apply to that unit.

(i) Any of the following units may implement this subsection (b):

(A) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(B) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(C) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing.

(ii) For each unit covered by this subsection (b), the account representative shall submit a notice to request that this subsection (b) apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the deadlines specified in R307-250-9(6)(a), and shall include the following information (in a format specified by the executive secretary with such additional, related information as may be requested):

(A) a list of all units at the WEB source that identifies the units that are to be covered by this subsection (b);

(B) an identification of any such units that are permanently retired.

(iii) For each new unit at an existing WEB source for which the WEB source seeks to comply with this paragraph (b) and for which the account representative applies for an allocation under the new source set-aside provisions of R307-250-7(6), the account representative shall submit a modified notice under (ii) above that includes such new sulfur dioxide emitting units. The modified request shall be submitted in accordance with the deadlines in R307-250-9(6)(a), but no later than the date on which a request is submitted under R307-250-7(6) for allocations from the set-aside.

(iv) The account representative for a WEB source shall submit an annual emissions statement for each unit under this subsection (b) pursuant to R307-250-9(8). The WEB source shall maintain operating records sufficient to estimate annual sulfur dioxide emissions in a manner consistent with the emission inventory submitted by the source for calendar year 1998. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account for the WEB source, the account representative shall report the extra amount as part of the annual report for the WEB source under R307-250-12 and shall obtain and transfer allowances into the special reserve compliance account to account for such emissions.

(v) R307-250-9(2) - (10) shall not apply to units covered by this paragraph except where otherwise noted.

(vi) A WEB source may opt to modify the monitoring for a sulfur dioxide emitting unit to use monitoring under (a) above, but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the account

representative must submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with (2) below. The account representative shall also submit a revised notice under R307-250-9(1)(b)(ii) at the same time that the initial monitoring plan is submitted.

(c) For any monitoring method that the WEB source uses under R307-250-9 including (b) above, the WEB source shall install, certify, and operate the equipment in accordance with this section, and record and report the data from the method as required in this section. In addition, the WEB source may not:

(i) except for an alternative approved by the EPA Administrator for a WEB source that implements monitoring under (a) above, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with (9) below;

(ii) operate a sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(iii) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(iv) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(A) during a period when the unit is exempt from the requirements of this Section, including retirement of a unit as addressed in (a)(iii) above;

(B) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this Section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(C) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this Section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this Section.

(2) Monitoring Plan.

(a) General Provisions. The WEB source with a sulfur dioxide emitting unit that uses a monitoring method under (1)(a)(ii) above shall meet the following requirements.

(i) Prepare and submit to the executive secretary an initial monitoring plan for each monitoring method that the WEB source uses to comply with this Section. In accordance with (c) below, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported. The plan shall be submitted in accordance with the deadlines specified in (6) below.

(ii) Prepare, maintain and submit to the executive secretary a detailed monitoring plan in accordance with the deadlines specified in (6) below. The plan will contain the applicable information required by (d) below. The executive secretary may require that the monitoring plan or portions of it be submitted electronically. The executive secretary may also require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under (8)(a) below or resubmitted separately within 30 days after any change is made to the plan in accordance with (iii) below.

(iii) Whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in (1)(a)(ii) above, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan, such as a change to serial number for a component of a monitoring system, then the WEB source shall update the monitoring plan.

(b) The WEB source with a sulfur dioxide emitting unit that uses a method under (1)(a)(i) above shall meet the requirements of (a) - (f) by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75. If requested, the WEB source also shall submit the entire monitoring plan to the executive secretary.

(c) Initial Monitoring Plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit or group of units sharing a common methodology that, except as otherwise specified in an applicable provision in Appendix E of State Implementation Plan Section XX, contains the following information:

(i) For all sulfur dioxide emitting units:

(A) plant name and location;

(B) plant and unit identification numbers assigned by the executive secretary;

(C) type of unit, or units for a group of units using a common monitoring methodology;

(D) identification of all stacks or pipes associated with the monitoring plan;

(E) types of fuels fired or sulfur containing process materials used in the sulfur dioxide emitting unit, and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(F) types of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(G) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(H) identification of all units using a common stack; and

(I) indicator of whether any stack identified in the plan is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a specific methodology submitted pursuant to (1)(a)(ii)(D) above, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(iii) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this Section, such petition may be submitted as part of the initial monitoring plan.

(iv) The executive secretary may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this Section.

(d) Detailed Monitoring Plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in Appendix E of State Implementation Plan Section XX, the Regional Haze SIP, shall contain the following information:

(i) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a continuous emissions monitoring system (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol

in Appendix B of SIP Section XX, including:

(A) manufacturer, model number and serial number;

(B) component and system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer and/or probe;

(C) designation of the component type and method of sample acquisition or operation such as in situ pollutant concentration monitor or thermal flow monitor;

(D) designation of the system as a primary or backup system;

(E) first and last dates the system reported data;

(F) status of the monitoring component; and

(G) parameter monitored.

(ii) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) hardware components that perform emission calculations or store data for quarterly reporting purposes, including the manufacturer and model number; and

(B) identification of the provider and model or version number of the software components.

(iii) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in 40 CFR Part 75.19(c) is not required to report such formulas.

(iv) For units with flow monitors only, the inside cross-sectional area in square feet at the flow monitoring location.

(v) If using CEMS for sulfur dioxide and flow, for each parameter monitored, include the scale, maximum potential concentration and method of calculation, maximum expected concentration, if applicable, and method of calculation, maximum potential flow rate and method of calculations, span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour for each unit or stack using sulfur dioxide or flow component monitors.

(vi) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(A) identification of the parameter;

(B) default, maximum, minimum, or constant value, and units of measure for the value;

(C) purpose of the value;

(D) indicator of use during controlled and uncontrolled hours;

(E) types of fuel;

(F) source of the value;

(G) value effective date and hour;

(H) date and hour value is no longer effective, if applicable; and

(I) for units using the excepted methodology under 40 CFR 75.19, the applicable sulfur dioxide emission factor.

(vii) Unless otherwise specified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which continuous emissions monitoring system hardware are installed:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousand of pounds per hour (lb/hr) of steam, or feet per second (ft/sec), as applicable;

(B) the load or operating level(s) designated as normal in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec, as applicable;

(C) the two load or operating levels (i.e., low, mid, or high) identified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(D) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load or operating levels; and

(E) activation and deactivation dates when the normal load or operating levels change and are updated.

(viii) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in subsection 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousand of lb/hr of steam;

(B) the load level designated as normal, pursuant to subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(C) the date of the load analysis used to determine the normal load level.

(ix) Information related to quality assurance testing, including, as applicable: identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels expressed as percent of span for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration if applicable, maximum potential flow rate, and span;

(x) If applicable, apportionment strategies under sections 75.10 through 75.18 of 40 CFR Part 75.

(xi) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(A) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and (i) and (iii) above. The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(B) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(xii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in (c) and (d) above, the WEB source with a sulfur dioxide emitting unit using either of the methodologies in (1)(a)(ii)(B) above shall include the following information in its monitoring plan for the specific situations described:

(i) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the Account Representative shall include the following information in the monitoring plan:

(A) parameter monitored;

(B) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate expressed as

the upper range value or unit maximum for each fuel flowmeter;

(C) test method used to check the accuracy of each fuel flowmeter;

(D) submission status of the data;

(E) monitoring system identification code;

(F) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(G) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeters, and the stacks. The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling locations. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(H) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either subsection 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(I) for units using the 720 hour test under subsection 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(J) for units using the 720 hour test under subsection 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(ii) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission excepted methodology of Section 75.19 to 40 CFR Part 75, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(A) the results of the analysis performed to qualify as a low mass emissions unit under Section 75.19(c) to 40 CFR Part 75. This report will include either the previous three years' actual or projected emissions. The report will include the current calendar year of application; the type of qualification; years one, two, and three; annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and annual operating hours for years one, two, and three.

(B) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeters, and the stacks. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(C) for units which use the long term fuel flow methodology under subsection 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(D) a statement that the unit burns only gaseous fuels or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuels or fuel oil and a list of the fuels that are projected to be burned;

(E) a statement that the unit meets the applicability requirements in sections 75.19(a) and (b) to 40 CFR Part 75 with respect to sulfur dioxide emissions; and

(F) any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under sections 75.19(a) and (b) to 40 CFR Part 75.

(iii) For each gas-fired unit, the account representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under this section shall not be part of a WEB source's operating permit issued under R307-415, and modifications to the elements of the plan shall not require a permit modification.

(3) Certification and Recertification.

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 or Appendix E of State Implementation Plan Section XX, as applicable. Certification or recertification of a monitoring system by the U.S. EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this Rule shall constitute certification under the WEB Trading Program.

(b) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following to the executive secretary:

(i) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the executive secretary may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under (2)(c) above; and

(ii) an initial certification application within 45 days after testing is complete.

(c) A monitoring system will be considered provisionally certified while the application is pending.

(d) Upon receipt of a disapproval of the certification of a monitoring system or component, the certification is revoked. The data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of revocation until the WEB source completes a subsequently-approved certification or re-certification test in accordance with the procedures in this rule. The WEB source shall apply the substitute data procedures in this rule to replace all of the invalid data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality Control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix E of State Implementation Plan Section XX, the applicable quality assurance and quality control requirements in Appendix E of State Implementation Plan Section XX on and after the date that certification testing commences.

(5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with R307-250, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix E of State Implementation Plan Section XX, with substitute data in accordance with that Appendix.

(b) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the WEB source shall use one of the following procedures.

(i) If the WEB source will use a continuous emissions monitoring system to comply with this Section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75. The procedures for conditional data validation under section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable.

(ii) If the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential

sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75.

(iii) If the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2.

(iv) If using a protocol in Appendix E of State Implementation Plan Section XX, follow the procedures in the applicable protocol.

(6) Deadlines.

(a) The initial monitoring plan required under R307-250-9(2)(a)(i) shall be submitted by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(ii) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

(iii) for any new WEB source, the monitoring plan shall be included with the notice of intent required by R307-401.

(b) The detailed monitoring plan required under R307-250-9(2)(a)(i) shall be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below.

(c) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of R307-250-9(3), including any referenced in Appendix E of State Implementation Plan Section XX, by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in R307-250-12.

(ii) for any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under (6)(a)(ii) above.

(iii) for any new WEB source or any new unit at a WEB source, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in R307-250-9(3)(b).

(e) For each control period, the WEB source shall submit each quarterly report no later than 30 days after the end of each calendar quarter, and shall submit each annual report no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) Except as provided in (b) below, the WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under this Rule for a period of five years. In addition, the WEB source shall keep a copy of all certificates for the duration of the WEB Trading Program. Unless otherwise requested by the WEB source and approved by the executive secretary, the copies shall be kept on site.

(b) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section or in Appendix E of State Implementation Plan Section XX. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this Section.

(8) Reporting.

(a) Quarterly Reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the executive secretary, including hourly and quality assurance activity information, and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB Trading Program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this paragraph (a) shall be required. The executive secretary may require that a copy of that report or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions be submitted separately.

(b) Annual Report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify total emissions for all units monitored in accordance with (1)(a) above and the total emissions for all units with emissions estimated in accordance with (1)(b) above. The annual report shall be submitted within 60 days after the end of a control period.

(c) If directed by the executive secretary, monitoring plans, reports, certifications or recertifications, or emissions data required to be submitted under this section also shall be submitted to the TSA.

(d) If the executive secretary rejects any report submitted under this subsection that contains errors or fails to satisfy the requirements of this section, the account representative shall resubmit the report to correct any deficiencies.

(9) Petitions. A WEB source may petition for an alternative to any requirement specified in (1)(a)(ii) above. The petition shall require approval of the executive secretary and the Administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable; and

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed, is consistent with the purposes of R307-250, and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the executive secretary may require.

(10) For any monitoring plans, reports, or other information submitted under this Rule, the account representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate for the WEB source submitted under R307-250-5.

R307-250-10. Allowance Transfers.

(1) Procedure. To transfer allowances, the account representative shall submit the following information to the TSA:

(a) the number or numbers identifying the transferor account;

(b) the number or numbers identifying the transferee account;

(c) the serial number of each allowance to be transferred; and

(d) the transferor's account representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year, or, if this date is not a business day, midnight of the first business day thereafter, following the end of the control period. By this time, the transfer of the allowances into the WEB

source's compliance account must be correctly submitted to the TSA in order to demonstrate compliance under R307-250-12 for that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative shall submit the following information to the TSA:

(a) the transfer account number identifying the transferor account;

(b) the serial number of each allowance to be retired; and

(c) the transferor's account representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

(4) Special Reserve Compliance Accounts. Allowances shall not be transferred out of special reserve compliance accounts. Allowances may be transferred into special reserve compliance accounts in accordance with the procedures in paragraph (1) above.

R307-250-11. Use of Allowances from a Previous Year.

(1) Any allowance that is held in a compliance account or general account will remain in the account until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

(2) In order to demonstrate compliance under R307-250-12(1) for a control period, WEB sources shall only use allowances allocated for that control period or any previous year.

(3) If flow control procedures for the current control period have been triggered as outlined in SIP Section XX.E.3.h(2), then the use of allowances that were allocated for any previous year will be limited in the following ways.

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) The number determined in (a) above will be multiplied by the flow control ratio established in accordance with SIP Section XX.E.3.h to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in (b) above may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under R307-250-12.

(4) Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with R307-250-12(1), allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

(5) Special Reserve Compliance Accounts. Unused allowances in any special reserve compliance account will be retired after the compliance deductions under R307-250-12 have been completed for each control period, and shall not be available for use in any future control period.

R307-250-12. Compliance.

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with (b) below, as of the allowance transfer deadline in the WEB source's compliance account, except as provided in (d) below for units monitored according to R307-250-9(1)(b), in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of R307-250-9.

(i) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone as determined in accordance with SIP Section XX.E.1.

(ii) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source became a WEB source.

(iii) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(iv) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in SIP Section XX.E.1.d, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(b) An allowance may only be deducted from the WEB source's compliance account if:

(i) the allowance was allocated for the current control period or meets the requirements in R307-250-11 for use of allowances from a previous control period, and

(ii) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined by comparing the following numbers:

(i) the monitored sulfur dioxide emissions data reported by the source to the executive secretary, in accordance with R307-250-9, and recorded in the emissions tracking database, and

(ii) the allowance allocations and transfers recorded in the allowance tracking system, either in a compliance account or a special reserve account, adjusted in accordance with R307-250-11(c).

(d) Deduction of Allowances.

(i) WEB Sources Monitoring According to R307-250-9(1)(a). To the extent consistent with R307-250-11, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account.

(ii) WEB Sources Monitoring According to R307-250-9(1)(b). The total emissions recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline of the current control period. If the emissions are less than or equal to the number of allowances, the allowances shall be retired.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the executive secretary a compliance certification report for the source.

(b) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(i) identification of each WEB source;

(ii) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account or special reserve compliance account for compliance with the allowance limitation; and

(iii) the compliance certification report according to (c) below.

(c) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

(i) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(ii) whether sulfur dioxide emissions data was submitted to the executive secretary in accordance with R307-250-9(8) and other applicable requirements for review, revision as necessary, and finalization;

(iii) whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with R307-250-9(1);

(iv) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(v) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with R307-250-9(1)(a)(iii) of this rule remained permanently retired and had no emissions for the entire applicable period; and

(vi) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

(3) Penalties for Any WEB Source Exceeding Its Allowance Limitations.

(a) Allowance Deduction Penalties.

(i) An allowance deduction penalty will be assessed equal to two times the number of the WEB source's tons of sulfur dioxide emissions in excess of its allowance limitation for a control period, determined in accordance with R307-250-12(1). Allowances allocated for the following control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(ii) Any allowance deduction required under R307-250-12(1)(c) shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or Utah Code 19-2. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation, or for each other violation of R307-250.

(b) Financial penalties. The penalty sought for emissions of sulfur dioxide by a source in excess of its emission limitation for a control period shall be $5,000 per ton.

(4) Liability.

(a) WEB Source liability for non-compliance. Separate and regardless of any allowance deduction penalty or financial penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under Utah Code 19-2. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(b) General Liability.

(i) Any provision of the WEB Trading Program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(ii) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to Utah Code 19-2.

(iii) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to the Utah Code.

R307-250-13. Special Penalty Provisions for the 2018 Milestone.

(1) If the WEB Trading Program is triggered as outlined in SIP Section XX.E.1, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(a) All WEB sources shall register, and shall open a compliance account within 180 days after the program trigger date, in accordance with R307-250-6(1) and R307-250-8.

(b) The TSA will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the executive secretary allocates the 2018 allowances under SIP Section XX.E.3.a and XX.E.4.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 30, 2021. WEB sources may transfer allowances as provided in R307-250-10(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018, including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in SIP Section XX.E.2, and R307-150

(e) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with R307-250-11(4), R307-250-12(1)(d) and R307-250-12(3), except that sulfur dioxide emissions shall be determined under R307-250-13(1)(d).

(2) The provisions in R307-250-13 shall continue to apply for each year after the 2018 emission year until:

(a) the first control period under the WEB trading program; or

(b) the executive secretary determines, in accordance with SIP Section XX.E.1.c(10), that the 2018 sulfur dioxide milestone has been met.

(3) If the special penalty provisions continue after the year 2018 as outlined in (2) above, the deadlines listed in (1)(a) through (d) above will be adjusted forward by one year for each additional year that the special penalty provisions are assessed.

R307-250-14. Integration into Permits.

(1) Initial Permitting. Each source that is a WEB source on or before the program trigger date shall follow the procedures outlined in R307-415 to incorporate all of the applicable requirements of this rule into the permit issued to it under R307-415.

(2) Post Trigger Permitting.

(a) New WEB Source. Any existing source that becomes a WEB source after the program trigger date shall submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the source became a WEB source, and shall follow the procedures of R307-415 to obtain an operating permit.

(b) WEB Sources No Longer Subject to Permitting Under R307-415. If a WEB source's permit issued under R307-415

ceases to be effective or required, the WEB source must submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the permit issued under R307-415 ceased to be effective or required.

KEY: air pollution, sulfur dioxide, market trading program
December 31, 2003 19-2-104(1)(a)
Notice of Continuation February 8, 2008 19-2-104(3)(e)

R307. Environmental Quality, Air Quality.
R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity.
R307-310-1. Purpose.

This rule establishes the procedures that may be used to trade a portion of the primary PM10 budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emission budgets in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)"

R307-310-2. Definitions.

The definitions contained in 40 CFR 93.101, effective as of the date referenced in R307-101-3, are incorporated into this rule by reference. The following additional definitions apply to this rule.

"Budget" means the motor vehicle emission projections used in the attainment demonstration in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

"NOx" means oxides of nitrogen.

"Primary PM10" means PM10 that is emitted directly by a source. Primary PM10 does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

"Transportation Conformity" means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

R307-310-3. Applicability.

(1) This rule applies to agencies responsible for demonstrating transportation conformity with the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

(2) This rule does not apply to emission budgets from Section IX, Part D.2 of the State Implementation Plan, "Ozone Maintenance Plan."

(3) This rule does not apply to emission budgets from Section IX, Part C.7 of the State Implementation Plan, "Carbon Monoxide Maintenance Provisions."

R307-310-4. Trading Between Emission Budgets.

(1) The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for NOx with a portion of the budget for primary PM10 for the purpose of demonstrating transportation conformity for NOx. The NOx budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary PM10 and NOx for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary PM10 budget that will be used to supplement the NOx budget, specified in tons per day using a 1:1 ratio of primary PM10 to NOx, for each required year of the conformity demonstration;

(iii) The remainder of the primary PM10 budget that will be used in the conformity demonstration for primary PM10, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary PM10 and NOx for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for NOx shall be demonstrated using the NOx budget supplemented by a portion of the primary PM10 budget as described in (a)(ii). Transportation conformity for primary PM10 shall be demonstrated using the remainder of the primary PM10 budget described in (a)(iii).

(c) The primary PM10 budget shall not be supplemented by using a portion of the NOx budget.

R307-310-5. Transition Provision.

R307-310, sections 1-4 will remain in effect until the day that EPA approves the conformity budget in the PM10 maintenance plan adopted by the board on July 6, 2005.

KEY: air pollution, transportation conformity, PM10
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The executive secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The executive secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the executive secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that

are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the executive secretary determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the executive secretary may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The executive secretary will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the executive secretary, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the executive secretary for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the executive secretary.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the executive secretary and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the executive secretary will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A ten-day public comment period will be established.

(ii) The public comment period in (i) above will be increased to 30 days for any source that is:

(A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,

(B) subject to the requirements of R307-406, Visibility,

(C) subject to the requirements of R307-415, Operating Permit Requirements;

(D) a synthetic minor source in accordance with R307-415-4(6);

(E) located in a nonattainment area or a maintenance area for any pollutant; or

(F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii).

(iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or

(B) within 15 days of the date the notice in (1above is published for comment periods established under (ii) above.

(v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

(3) The executive secretary will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The executive secretary will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the executive secretary determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the executive secretary will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water

heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replaced process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the executive secretary before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the executive secretary will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the executive secretary is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the executive secretary no later than 60 days after the changes are made. The executive secretary will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the executive secretary to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the executive secretary. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the executive secretary or the executive secretary's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the executive secretary prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the executive secretary prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

R307-401-19. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

R307-401-20. Relaxation of Limitations.

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

KEY: air pollution, permits, approval orders
February 8, 2008 19-2-104(3)(q)
Notice of Continuation July 13, 2007 19-2-108

R307. Environmental Quality, Air Quality.
R307-417. Permits: Acid Rain Sources.
R307-417-1. Part 72 Requirements.

The provisions of 40 CFR Part 72, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the Executive Secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

R307-417-2. Part 75 Requirements.

The provisions of 40 CFR Part 75, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the executive secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 75 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 75 shall apply and take precedence.

R307-417-3. Part 76 Requirements.

The provisions of 40 CFR Part 76, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the executive secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 76 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 76 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority, operating permit
February 8, 2008 19-2-101
Notice of Continuation July 13, 2007 19-2-104(3)(q)

R307. Environmental Quality, Air Quality.
R307-801. Asbestos.
R307-801-1. Purpose and Authority.

Rule R307-801 establishes procedures and requirements for asbestos projects and training programs, procedures and requirements for the certification of persons engaged in asbestos activities, and work practice standards for performing such activities. This rule is promulgated under the authority of 19-2-104(1)(d), (3)(r), (3)(s), (3)(t). Penalties are authorized by 19-2-115.

R307-801-2. Applicability and General Provisions.

(1) Applicability.

(a) The following persons are operators and are subject to the requirements of R307-801:

(i) Persons who contract for hire to conduct renovation of structures or facilities, or to conduct demolition of structures or facilities, except for residential outbuilding structures of less than 100 square feet;

(ii) Persons who conduct renovation or demolition in areas to which the general public has unrestrained access; or

(iii) Persons who conduct renovation or demolition in school buildings subject to AHERA or who conduct asbestos inspections in structures subject to TSCA Title II.

(b) The following persons are subject to certification requirements:

(i) Persons required by TSCA Title II to be accredited as inspectors, management planners, project designers, supervisors, or workers;

(ii) Persons who work on an asbestos project as workers, supervisors, inspectors, project designers, or management planners; and

(iii) Companies that conduct asbestos projects or inspections, create project designs, or prepare management plans in structures or facilities.

(2) All persons who are required by R307-801 to obtain an approval, certification, determination or notification from the executive secretary must obtain it in writing.

(3) Persons wishing to deviate from the certification, notification, work practice, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the executive secretary.

R307-801-3. Definitions.

The following definitions apply to R307-801:

"Adequately Wet" means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos Containing Material (ACM)" means any material containing more than one percent (1%) asbestos by the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is less than 10%, the asbestos concentration must be determined by point counting using PLM procedure.

"Asbestos Inspection" means any activity undertaken to determine the presence or location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos Project" means any activity involving the removal, renovation, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than small scale short duration.

"Asbestos Removal" means the stripping of friable asbestos-containing material from surfaces or components of a structure or taking out structural components that contain or are covered with friable ACM from a structure.

"Asbestos Survey Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos Waste" means any waste that contains asbestos. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments, and is friable or regulated in its current condition.

"Demolition" means the wrecking, salvage, or removal of any load-supporting structural member of a structure together with any related handling operations, or the intentional burning of any structure. This includes the moving of an entire building.

"Disturb" means to disrupt the matrix of ACM or regulated asbestos-containing material, crumble or pulverize ACM or regulated asbestos-containing material, or generate visible debris from ACM or regulated asbestos-containing material.

"Division" means the Division of Air Quality.

"Emergency Renovation Operation" means any asbestos project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the Division. This term includes operations necessitated by non-routine failure of equipment and does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative; any ship; and any active or inactive

waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to the NESHAP is not excluded, regardless of its current use or function. Public building and commercial building have the same meanings as they do in TSCA Title II.

"Friable Asbestos Containing Material (Friable ACM)" means any asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Glovebag" means an impervious plastic bag-like enclosure, not more than a 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"HEPA Filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, designed for use in asbestos-contaminated environments.

"Inaccessible" means in a physically restricted or obstructed area or covered in such a way that detection or removal is prevented or severely hampered.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who prepares a management plan for a school building subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from structural members or components where the length and area could not be measured previously.

"NESHAP-Sized Asbestos Project" means any asbestos project that involves at least a NESHAP amount of ACM.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I nonfriable ACM that has become friable, Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

"Renovation" means the alteration in any way of one or more structural components, excluding demolition.

"Small-Scale, Short-Duration (SSSD) Asbestos Project" means an asbestos project that removes or disturbs less than 3 square feet or 3 linear feet of RACM in a facility or structure.

"Strip" means to take off ACM from any part of a structure or structural component.

"Structural Component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure, or any structural member of the structure.

"Structural Member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-801, any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor-supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos project covered by R307-801 whose act or process produces asbestos waste.

"Working Day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

R307-801-4. Adoption and Incorporation of 40 CFR 763 Subpart E.

(1) The provisions of 40 CFR 763 Subpart E, including appendices effective as of the date referenced in R307-101-3 are hereby adopted and incorporated by reference.

(2) Implementation of the provisions of 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

R307-801-5. Company Certifications.

(1) All persons must have an Asbestos Company Certification before contracting for hire to conduct asbestos inspections, create management plans, create project designs, monitor asbestos projects, or to remove or otherwise disturb more than the SSSD amount of asbestos.

(2) To obtain Utah Asbestos Company Certification, all persons shall submit a completed application for certification on a form provided by the executive secretary.

(3) Unless revoked or suspended, a company certification shall remain in effect until the end of the calendar year in which it was issued.

R307-801-6. Individual Certification.

(1) To obtain certification as a worker, supervisor, inspector, project designer, or management planner, each person shall first:

(a) Provide personal identifying information;

(b) Pay the appropriate fee;

(c) Fill out the appropriate form provided by the executive secretary;

(d) Provide certificates of initial and current training that demonstrate accreditation in the corresponding discipline. Any of the following TSCA accreditation courses is acceptable unless the executive secretary has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801: courses approved by the executive secretary, approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II.

(2) Duration and Renewal of Certification.

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall first:

(i) Submit a completed application for renewal on a form provided by the executive secretary; and

(ii) Submit a current certificate of TSCA accreditation for initial or refresher training in the appropriate discipline.

R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.

(1) An application for certification may be denied if the individual, applicant company, or any principle officer of the applicant company has a documented history of noncompliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The executive secretary may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or 40 CFR Part 61, Subpart M, including but not limited to:

(a) Falsification of or knowing omission in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate or TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

R307-801-8. Approval of Training Courses.

(1) To obtain approval of a training course, the course provider shall first provide a written application to the executive secretary that includes:

(a) Name, address, phone number, and institutional affiliation of person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan and R307-801 requirements for length of training in hours or days, amount and type of hands-on training, examinations, including length, format, example of examination or questions, and passing scores, and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) Names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement; and

(f) Description and an example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date one year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the executive secretary with the names, social security numbers or government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the executive secretary or authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary; and

(e) Notify the executive secretary of any new course instructor 10 working days prior to the day the new instructor presents or teaches any course for TSCA Accreditation purposes. The notification shall include:

(i) Name and qualifications of each course instructors, including all academic credentials and field experience in asbestos abatement; and

(ii) A list of the courses or specific topics that will be taught by the instructor.

(3) All course providers that provide an AHERA training course or refresher course in the state of Utah shall:

(a) Notify the executive secretary of the location, date, and time of the course at least ten days before the first day of the course;

(b) Update the notification as soon as possible, and no later than the original course date, if the course is rescheduled or cancelled before the course is held; and

(c) Allow the executive secretary to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

R307-801-9. Renovation and Demolition: Requirement to Inspect.

(1) Except as described in (2) below, the operator shall ensure that the structure or facility to be demolished or renovated is inspected for ACM by an inspector certified under the provisions of R307-801-6. An asbestos survey report shall be generated according to the provisions of R307-801-10. The operator shall make the asbestos survey report available on site to all persons who have access to the site for the duration of the renovation or demolition activities, and to the executive secretary upon request.

(2) If the structure has been ordered to be demolished because it is found by a local jurisdiction to be structurally unsound and in danger of imminent collapse, the operator may demolish the structure without having the structure or facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall ensure that all resulting demolition debris is disposed of as asbestos waste, according to R307-801-15. If the demolition debris cannot be containerized, the operator shall obtain approval for an alternative procedure from the executive secretary.

R307-801-10. Renovation and Demolition: Asbestos Inspection Procedures.

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of facilities to be demolished or renovated.

(1) Determine the scope of demolition or renovation activities.

(2) Inspect the affected facility or part of the facility where the demolition or renovation operation will occur.

(3) Identify all accessible suspect ACM building materials in the affected facility or part of the facility where the demolition or renovation operation will occur.

(4) Follow a sampling method approved by the executive secretary, to demonstrate that suspect ACM does not contain asbestos.

(5) Assume that unsampled suspect ACM contains asbestos and is ACM; and

(6) Complete an asbestos survey report containing all of the following information in a format approved by the executive secretary:

(a) A brief description of the affected area;

(b) A list of all suspect materials identified in the affected area. For each suspect material provide the following information:

(i) The amount of material in linear feet, square feet, or cubic yards;

(ii) A clear description of the distribution of the material in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and shown to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A determination of whether the material is RACM or

may become RACM when subjected to the proposed renovation or demolition activities.

(c) A list of samples collected from suspect materials in the affected area. For each sample provide the following information:

(i) Which suspect material, in the above list, the sample represents;

(ii) A clear description of the original location of the sample;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect materials that were not accessible to inspection that may be part of the affected area.

(7) Floor plans or architectural drawings and similar representations may be used to aid in conveying the location of suspect materials or samples, but if so, they must be appended to the asbestos survey report.

R307-801-11. Renovation and Demolition: Notification and Asbestos Removal Requirements.

(1) Demolitions.

(a) If the amount of RACM in the structure is less than the SSSD amount, the operator shall submit a notification of demolition at least 10 working days before the start of demolition, and remove the RACM before commencing demolition.

(b) If the amount of RACM in the structure is greater than or equal to the SSSD amount but less than the NESHAP amount, the operator shall submit an asbestos notification at least 10 working days before the start of demolition and at least one working day before commencing removal, and shall remove the RACM according to the work practice provisions of R307-801 before demolition proceeds.

(c) If the amount of RACM in the structure is greater than or equal to the NESHAP amount, the operator shall submit an asbestos notification at least 10 working days before the asbestos removal begins. Demolition shall not proceed until after all RACM has been removed from the structure.

(d) If any structure is to be demolished by intentional burning, the operator, in addition to the notification specified in (a), (b) or (c), shall ensure that all ACM, including non friable ACM and RACM, is removed from the structure before burning.

(e) If the structure has been ordered to be demolished because it is found by a local jurisdiction to be structurally unsound and in danger of imminent collapse, the operator shall submit a notification of demolition as soon as possible, but no later than the next working day after demolition begins.

(2) Renovations.

(a) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is less than the SSSD amount, the operator shall remove the RACM before commencing the renovation.

(b) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is greater than the SSSD amount but smaller than NESHAP amount, the operator shall submit an asbestos notification at least one working day before asbestos removal begins, unless the removal was properly included in an annual asbestos notification submitted pursuant to (d) below, and shall remove RACM according to general work practices of R307-801 before performing renovation activities.

(c) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is greater than or equal to the NESHAP amount, then the operator shall submit an asbestos notification as described below, and shall ensure that RACM that would be disturbed by renovation activities and non-friable ACM that may be rendered friable or regulated by renovation activities is removed according to the work practice and disposal requirements of R307-801. The operator shall not commence renovation activities until the asbestos removal process is completed.

(i) If the renovation is an emergency renovation operation, then the notification shall be submitted as soon as possible before and no later than the next business day after asbestos removal begins.

(ii) If the renovation is not an emergency renovation operation, then the notification shall be submitted at least ten working days before asbestos removal begins.

(d) The operator shall submit an annual notification according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than 10 working days before the first day of January of the year during which the work is to be performed in the following circumstances:

(i) The asbestos projects are unplanned operation and maintenance activities;

(ii) The asbestos projects are less than NESHAP-sized; and

(iii) The total amount of asbestos to be disturbed in a single facility during these asbestos projects is expected to exceed the NESHAP amount in a calendar year.

R307-801-12. Renovation and Demolition: Notification Procedures and Contents.

(1) All notifications required by R307-801 shall be submitted in writing on the appropriate form provided by the executive secretary and shall be postmarked or received by the Division by the date specified, or shall be submitted using the Division of Air Quality electronic notification system by the date specified. The type of notification and whether the notification is original or revised shall be indicated.

(2) If the notification is an original notification of demolition, an original asbestos notification for a NESHAP-sized asbestos project, or an original annual notification, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received at the Division. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the Division.

(3) An original asbestos notification for a less than NESHAP-sized asbestos project or any revised notification may be submitted by any of the methods in (2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.

(4) All original notifications shall contain the following information:

(a) The name, address, and telephone number of the owner of the structure, and of any contractor working on the project;

(b) Whether the operation is a demolition or a renovation project;

(c) A description of the structure that includes the size in square feet or square meters, the number of floors, the age, and the present and prior uses of the structure;

(d) The procedures, including analytical methods, used to inspect for the presence of ACM;

(e) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of the structure being demolished or renovated;

(f) A description of procedures for handling the discovery of unexpected ACM or of nonfriable ACM that has become friable or regulated;

(g) A description of planned demolition or renovation work, including the demolition and renovation techniques to be used and a description of the affected structural components.

(5) In addition to the information in (4) above, an original demolition notification shall contain the following information:

(a) An estimate of the amount of non-friable and non-regulated ACM that will not become regulated as a result of demolition activities and that will remain in the building during demolition;

(b) The starting and ending dates of demolition activities; and

(c) If the structure will be demolished under an order of a state or local government agency, the name, title, and authority of the government representative ordering the demolition, the date the order was issued, and the date the demolition was ordered to commence. A copy of the order shall be attached to the notification.

(6) In addition to the information in (4) and (5) above, an original asbestos notification or an annual notification shall contain the following information:

(a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used;

(b) The scheduled starting and completion dates of asbestos removal work in a renovation or demolition;

(c) The beginning and ending dates for preparation and asbestos removal, and of renovation activities if applicable;

(d) If an emergency renovation operation will be performed, the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden;

(e) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;

(f) The name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of the waste disposal site contact;

(g) The name, address, contact person, and phone number of the waste transporters; and

(h) The name, contact person, and phone number of the person receiving the waste shipment record as required by 40 CFR 61.150(d)(1).

(7) A revised notification shall contain the following information:

(a) The name, address, and telephone number of the owner of the structure, and any demolition or asbestos abatement contractor working on the project;

(b) Whether the operation is a demolition or a renovation project;

(c) The date that the original notification was submitted;

(d) The applicable original start and stop dates for asbestos removal, renovation, or demolition;

(e) Revised start and stop dates, if applicable, for asbestos removal or demolition activities;

(f) Changes in amount of asbestos to be removed, if applicable; and

(g) All other changes.

(8) If a NESHAP-sized asbestos project that requires a notification under (4) above or a demolition project that requires a notification under (4) above will commence on a date other than the date submitted in the original written notification, the executive secretary shall be notified of the new starting date by the following deadlines.

(a) If the new starting date is later than the original starting date, notice by telephone shall be given as soon as possible before the original starting date and a revised notice shall be submitted in accordance with R307-801-12(7) as soon as possible before, but no later than, the original starting date.

(b) If the new starting date is earlier than the original starting date, submit a written notice in accordance with R307-801-12(7) at least ten working days before beginning the project.

(c) In no event shall an asbestos project covered by this subsection begin on a date other than the new starting date submitted in the revised written notice.

R307-801-13. Renovation and Demolition: Requirements for Certified Workers.

(1) A supervisor who has been certified under R307-801 shall be on site during asbestos project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized RACM.

(2) All persons handling greater than the SSSD amount of uncontainerized RACM shall be workers or supervisors certified under R307-801.

R307-801-14. Renovation and Demolition: Asbestos Work Practices.

(1) Persons performing any asbestos project shall follow the work practices in this subsection. Where the work practices in R307-801-14(1) and (2) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet RACM with amended water before exposing or disturbing it.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-15.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the asbestos work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to 5 microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment and waste bags before they leave the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using HEPA vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist the space and surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable ACM or RACM according to the disposal provisions of R307-801.

(2) All operators of NESHAP-sized asbestos projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of 6 mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present, the site shall be prepared by removing the debris using the work practice and disposal requirements of R307-801. If the total amount of loose visible RACM debris throughout the entire work area is less than the SSSD amount, then site preparation may begin after notification and before the end of the ten working day waiting period.

(c) All persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure.

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of 6 mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least 2 layers of 4 mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent; and

(iv) Maintain the integrity of all enclosure barriers.

(v) Where a wall or floor will be removed as part of the asbestos project, polyethylene sheeting need not be applied to that component.

(g) View ports shall be installed in the enclosure or barriers where feasible. View ports shall be:

(i) At least one foot tall and one foot wide;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least 3 chambers as specified by 29 CFR 1926.1101(j)(1);

(iii) The clean room, which is the chamber that opens to the outside, shall be no less than 3 feet wide by 3 feet long;

(iv) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than 3 feet wide by 3 feet long;

(v) The dirty room shall be provided with an accessible waste bag at any time that asbestos work is being done.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of 6 mil or thicker polyethylene walls and 6 mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least 3 feet long, 3 feet high, and 3 feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and may include a water supply with filtered drain, clean rags and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the structure whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(3) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-(2)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:

(a) If an asbestos project is conducted in a crawl space or pipe chase and the available space is less that 6 feet high or is less than 3 feet wide, then the following may be used:

(i) Drop cloths extending at least 6 feet around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent; and

(ii) Either glovebags, wrap and cut, or the open top catch bag method must be used. The open top catch bag method may be used only if the material to be removed is pre-formed RACM pipe insulation.

(b) Scattered ACM. If the RACM is scattered in small patches, such as isolated pipe fittings, the following procedures may be used.

(i) Glovebags, mini-enclosures as described in R307-801-14(5), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glovebags or mini-enclosure, then openings need not be sealed and negative pressure need not be maintained outside of the glovebags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-14(5)(d) only if an attached decontamination unit is not feasible.

(4) During outdoor asbestos projects, the work practices of R307-801-14 shall be followed, with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene or equivalent drop cloth large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-14(5)(d) may be used.

(5) Special work practices.

(a) If the wrap and cut method is used:

(i) The component shall be cut at least 6 inches from any RACM on that component;

(ii) If asbestos will be removed from the component to accomodate cutting, the asbestos removal shall be done using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak tight and shall consist of two layers of 6 mil polyethylene, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) Asbestos waste bags that are leak tight and strong enough to hold contents securely shall be used;

(ii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iii) All material stripped from the component shall be placed in the bag;

(iv) One worker shall hold the bag and another worker shall strip the ACM into the bag; and

(v) A drop cloth large enough to capture all RACM originating in the work area shall be used.

(c) If glove bags are used, they shall be negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-14(3)(b) or (4), or when approved by the executive secretary. The remote decontamination unit and procedures shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of 6 mil or thicker polyethelene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as asbestos waste.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

R307-801-15. Disposal and Handling of Asbestos Waste.

(1) Containerize asbestos waste while adequately wet.

(2) Asbestos waste containers shall be leak-tight and strong enough to hold contents securely.

(3) Containers shall be labeled with the waste generator's name, address, and phone number, and the contractor's name and address, before they are removed from the work area.

(4) Containerized RACM shall be disposed of at a landfill which complies with 40 CFR 61.150.

(5) The waste shipment record shall include a list of items and the amount of asbestos waste being shipped. The waste generator originates and signs this document.

R307-801-16. Records.

(1) Certified asbestos companies shall maintain records of all asbestos projects that they perform and shall make these records available to the executive secretary upon request. The records shall be retained for at least five years. Maintained records shall include the following:

(a) Names and state certification numbers of the asbestos workers and supervisors who performed the asbestos project;

(b) Location and description of the asbestos project and amount of Friable ACM removed;

(c) Starting and completion dates of the asbestos project;

(d) Summary of the procedures used to comply with applicable requirements including copies of all notifications; and

(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.

(f) Asbestos surveys associated with the asbestos project.

(2) All other persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos survey reports for at least one year after renovation or demolition activities have ceased, and shall make these reports available to the executive secretary upon request.

KEY: air pollution, asbestos, asbestos hazard emergency response, schools
February 8, 2008 19-2-104(1)(d)
Notice of Continuation February 8, 2008 19-2-104(3)(r) through (t)
40 CFR Part 61, Subpart M
40 CFR Part 763, Subpart E

R307. Environmental Quality, Air Quality.
R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.
R307-840-1. Purpose and Applicability.

(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.

(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.

R307-840-2. Definitions.

(1) Definitions found in 40 CFR 745.63, 40 CFR 745.83, and 40 CFR 745.223, effective as of the date referenced in R307-101-3, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below.

(2) Substitutions.

(a) Substitute "the Executive Secretary" for all references to "EPA" except in the definition of "Pamphlet" found in 40 CFR 745.83 and in the definition of "Recognized laboratory" found in 40 CFR 745.223.

(b) Substitute "the Executive Secretary" for all references to "Administrator".

(3) Modifications.

(a) Delete the definition of "Administrator" found in 40 CFR 745.83.

(b) Modify the definition of "Pamphlet" found in Sec. 745.83 by deleting ", or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose".

(c) Delete the definition of "Lead-based paint hazard" found in 40 CFR 745.223.

(d) Modify the definition of "Business day" found in Sec. 745.223 by including "and State of Utah" before "holidays".

R307-840-3. Accreditation, Certification and Work Standards: Target Housing and Child-Occupied Facilities.

(1) The following requirements, effective as of date referenced in R307-101-3, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below:

(a) 40 CFR 745.61, 745.65, 745.80, 745.81, 745.82, 745.85, 745.86, 745.88, 745.225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233.

(2) Substitutions.

(a) Substitute "the Executive Secretary" for all references to "EPA" with the following exceptions:

(i) Sec. 745.65(d).

(ii) Sec. 745.86(b)(1).

(iii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv), Sec. 745.225(c)(2)(ii), Sec. 745.225(c)(10), Sec. 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).

(iv) The last reference to EPA in Sec. 745.226(a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).

(v) The first three references to EPA in Sec. 745.227(a)(3), and the reference to EPA in Sec. 745.227(a)(4), Sec. 745.227(e)(4)(vi)(D), Sec. 745.227(e)(4)(vi)(I), and Sec. 745.227(f)(2).

(b) Substitute "the Executive Secretary or the Executive Secretary's authorized representative" for references to "EPA" in Sec. 745.225(c)(12), Sec. 745.225(f)(4), and Sec. 745.225(i)(1).

(c) Substitute "the Executive Secretary" for all references to "Administrator".

(d) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or a State or Tribal certification program authorized pursuant to Sec. 745.324" in Sec. 745.82(b)(3).

(e) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or an EPA-authorized State or Tribal certification program" in Sec. 745.86(b)(1).

(f) Substitute "Sec. 745.82(b)(3)" for "Sec. 745.82(b)(iv)" in 40 CFR 745.86(b)(1).

(g) Substitute sample certification language found in Sec. 745.88(b)(2)(ii) with that found in Sec. 745.88(b)(2)(i).

(h) Substitute sample certification language found in Sec. 745.88(b)(2)(i) with that found in Sec. 745.88(b)(2)(ii).

(i) Substitute "the current Department of Environmental Quality Fee Schedule" for references to "Sec. 745.238" in Sec. 745.225(b)(4), Sec. 745.225(f)(3)(v), Sec. 745.226(a)(6), Sec. 745.226(e)(3), Sec. 745.226(f)(6), and Sec. 745.226(f)(7).

(j) Substitute "Utah Division of Air Quality electronic notification system" for "Agency's central data exchange (CDX)" in Sec. 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec. 745.227(e)(4)(vii).

(k) Substitute "Notification Form" for "Schedule" in Sec. 745.225(c)(13)(vi).

(l) Substitute "Utah Division of Air Quality Lead-Based Paint Program web site" for "NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead" in Sec. 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec. 745.227(e)(4)(vii).

(m) Substitute "Verification Form" for "Course Follow-up" in Sec. 745.225(c)(14)(iii).

(n) Substitute "Utah lead-based paint firm" for "EPA" in Sec. 745.227(e)(4)(vi)(D).

(o) Substitute "Utah lead-based paint individual" for "EPA" in Sec. 745.227(e)(4)(vi)(I).

(p) Substitute "Lead-Based Paint Abatement Project Notification" for "Notification of Lead-Based Paint Abatement Activities" in Sec. 745.227(e)(4)(vii).

(q) Substitute "Sec 745.65(b)" for "Sec 745.227(b)" in 40 CFR 745.227(h)(2)(i).

(3) Modifications.

(a) Change the date in Sec. 745.81 to October 1, 2005.

(b) Change the date in Sec. 745.226(a)(5), Sec. 745.226(d)(2), Sec. 745.226(f)(1), and Sec. 745.227(a)(1) to August 30, 1999.

(c) Modify Sec. 745.225(b)(1)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part,".

(d) Modify Sec. 745.225(b)(1)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".

(e) Modify Sec. 745.225(c)(2)(ii) by including "Executive

Secretary-accredited," before "EPA-accredited".

(f) Modify Sec. 745.225(c)(13)(v)(B) and Sec. 745.225(c)(14)(ii)(A) by deleting "EPA accreditation number,".

(g) Modify Sec. 745.225(c)(14)(ii)(F) to include "Utah Division of Air Quality Lead-Based Paint Program training verification statement".

(h) Modify Sec. 745.225(e)(5)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under Sec. 745.324 to develop its refresher training course materials,".

(i) Modify Sec. 745.225 (e)(5)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".

(j) Modify Sec. 745.226 (a)(1)(ii) by including "EPA or" after the word "from".

(k) Modify Sec. 745.226(f)(7) by deleting "every 3 years".

(l) Modify Sec. 745.227 (a)(3) by deleting "Regulations, guidance, methods, or protocols issued by States and Indian Tribes that have been authorized by EPA;".

KEY: air pollution, paint, lead-based paint
February 8, 2008 19-2-104(1)(i)
Notice of Continuation February 8, 2008

R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Executive Secretary to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste, excluding waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of

two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, that may be generated by these operations.

(a) Such waste may include:

(i) concrete, bricks, and other masonry materials;

(ii) soil and rock;

(iii) waste asphalt;

(iv) rebar contained in concrete; and

(v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

(i) friable asbestos;

(ii) treated wood; or

(iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous

solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section R315-2-4;

(ix) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

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

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

(a) creosote or related compounds;

(b) Arsenic;

(c) Chromium; or

(d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material

generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit form the Executive Secretary and shall meet all of the following;

(i) submit the required permit application in the time frame specified by the Executive Secretary and respond promptly to all requests for information from the Executive Secretary related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary and has received a letter of approval from the Executive Secretary to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, waste disposal

February 1, 2007	**19-6-105**
Notice of Continuation February 14, 2008	**19-6-108**
	19-6-109
	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and

(v) Incinerators as specified in Rule R315-306.

(b) These standards, accept for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) a hazardous waste disposal sites regulated by Rules R315-1 through R315-50 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Executive Secretary that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Executive Secretary that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Executive Secretary that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Executive Secretary that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean

Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Executive Secretary:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Executive Secretary, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Executive Secretary may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may wave the ground water monitoring requirement. If ground water monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Executive Secretary if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-2 may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Executive Secretary.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Executive Secretary, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Executive Secretary that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Executive Secretary that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility must receive notice from the Executive Secretary that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Executive Secretary. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Executive Secretary or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Executive Secretary no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Executive Secretary.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Executive Secretary, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Executive Secretary.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Executive Secretary by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Executive Secretary.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the

inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Executive Secretary or his authorized representative upon request.

(b) The Executive Secretary or any duly authorized officer, employee, or representative of the Board may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Executive Secretary.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(9). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Executive Secretary, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Executive Secretary may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Executive Secretary.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Executive Secretary of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Executive Secretary if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Executive Secretary, submit to the Executive Secretary:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Executive Secretary determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Executive Secretary to protect human health and the environment for a period of 30 years or a period established by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Executive Secretary as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production

or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Executive Secretary may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Executive Secretary may direct that post-closure activities cease until the owner or operator receives a notice from the Executive Secretary to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Executive Secretary, the owner or operator shall submit a certification to the Executive Secretary, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Executive Secretary finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Executive Secretary may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108
19-6-109
40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

The standards of Rule R315-303 apply to:

(1) Class I, II, and V Landfills;

(2) Class III Landfills as specified in Rule R315-304; and

(3) Class IV, and VI Landfills as specified in Rule R315-305.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Executive Secretary based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the Executive Secretary, from the run-on and run-off control requirements of Subsections R315-303-3(1)(c) and (d).

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods, either of which shall be approved by the Executive Secretary;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a landfill shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Equivalent Design.

(i) The Executive Secretary may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the equivalent design will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liner design required in Subsection R315-303-3(3)(a).

(ii) When approving an equivalent liner design, the Executive Secretary shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate; or

(c) Alternative Design.

(i) The owner or operator may use, as approved by the Executive Secretary, an alternative design.

(ii) The owner or operator must demonstrate that the ground water quality protection standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Executive Secretary, and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; and

(E) predictions of leachate flow from the base of the waste to the uppermost aquifer; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Executive Secretary may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design.

(i) The small landfill design applies only to a Class II Landfill.

(ii) Each new Class II Landfill and any existing Class II Landfill seeking facility expansion shall meet the location standards of Section R315-302-1.

(iii) Each new and existing Class II Landfill shall meet the performance standards of Section R315-303-2.

(iv) A Class II Landfill, which meets the requirements of Subsection R315-303-3(3)(e)(v), is exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(v) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination;

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Executive Secretary;

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation;

(D) the landfill receives, on a yearly average, no more than 20 tons of waste per day, or if a tonnage cannot be determined, serves a population of no more than 8,900; and

(E) the landfill meets all the requirements in Rules R315-301 through 320 applicable to Class II landfills.

(vi) A Class II Landfill may lose the exemptions of the small landfill design if at any time the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(4) Closure. At closure, an owner or operator of a Class I, II, IIIa, IVa, and V Landfill shall use one of the following designs for the final cover.

(a) Standard Design. The standard design of the final cover shall consist of two layers:

(i) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent, with a permeability of 1×10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts;

(A) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(B) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(ii) a layer to minimize erosion, consisting of:

(A) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(B) other suitable material, approved by the Executive Secretary.

(b) Requirements for any Earthen Final Cover at a Landfill.

(i) Markers or other benchmarks shall be installed in any final earthen cover to indicate the thickness of the final cover. These markers shall be observed during each quarterly inspection and the earthen cover shall be raised to the appropriate thickness as necessary.

(ii) Erosion channels deeper than 10% of the total cover thickness shall be repaired as soon as possible following their discovery.

(c) Alternative Final Cover Design. The Executive Secretary may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the alternative final cover achieves an equivalent reduction in infiltration as achieved by the standard design in Subsection R315-303-3(4)(a)(i); and

(ii) the alternative final cover provides equivalent protection from wind and water erosion as achieved by the standard design in Subsection R315-303-3(4)(a)(ii).

(d) The expected performance of an alternative final cover design shall be documented by the use of an appropriate mathematical model.

(i) The input for the modeling shall include the climatic conditions at the specific landfill site and the soil types that will make up the final cover.

(ii) The model shall:

(A) be run to show the expected performance of the final cover at normal precipitation for a period of time until stability has been reached; and

(B) shall be run to show the expected performance of the final cover during the five wettest years on record at the site or the nearest weather station.

(e) The Executive Secretary shall use the following criteria as part of the basis for determining if an alternative final cover will be approved:

(i) If the landfill has a liner design that does not use a synthetic material such as HDPE, the model will compare the infiltration through the standard cover as required in Subsection R315-303-3(4)(a) and shall show that the alternative cover performs as well as the standard cover; or

(ii) If the landfill has a liner composed in part of a synthetic material such as HDPE, the model must show an infiltration rate of no greater that 3 millimeters of water per year during any year of the model run.

(f) If a landfill has been constructed using an approved alternative landfill design, the Executive Secretary may require, on a site-specific basis, the landfill closure design to be more stringent than the standard design specified in Subsection R315-303-3(4)(a) to protect human health or the environment.

(g) In no case shall any modification be made to the final cover, as placed and approved at closure by the Executive Secretary, unless that modification:

(i) is a necessary repair of the approved final cover;

(ii) maintains or improves the effectiveness of the final cover; and

(iii) is approved by the Executive Secretary.

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the Executive Secretary;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Executive Secretary, for the explosive gas release, place a copy of the plan in the operating record, and notify the Executive Secretary that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Executive Secretary may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Executive Secretary may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste, or other waste with potential to generate methane during decomposition, is exempt from the gas monitoring requirement of Subsection

R315-303-3(5)(a).

(6) Design Drawings.

(a) Design drawings and as built drawings of any engineered structure, including landfill liners, leachate collection systems, run-on/run-off control systems, final covers, ground water monitoring systems, and gas collection systems, shall be signed and sealed by a professional engineer registered in the State of Utah.

(b) As built drawings shall be submitted to the Executive Secretary on or before 90 days following the completion of the engineered structure at the landfill.

(7) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Executive Secretary. The Executive Secretary may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of all incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct reclamation of facility property in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel, trained in landfill operations, are on site when the site is open to the public;

(i) at least one person on site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit by placing permanent posts or by using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or an alternative daily cover as allowed in Subsections R315-303-4(4)(b) through (e).

(b) The following are approved for use as alternative daily covers:

(i) non-hazardous contaminated soil; and

(ii) subject to the conditions contained in Subsection R315-303-4(4)(c):

(A) tarps;

(B) plastic sheets, when designed for landfill cover use;

(C) foam products, when designed for landfill cover use;

(D) products created from cement kiln dust, when designed for landfill cover use;

(E) incinerator ash;

(F) non-hazardous auto shredder residue not otherwise regulated by 40 CFR Part 761;

(G) chipped waste tires; and

(H) spray-on materials, when designed for landfill cover use.

(c) The use of an approved alternative daily cover is subject to the following conditions:

(i) the alternative daily cover may not present a threat to human health or the environment; and

(ii) the alternative daily cover may be used only on a schedule as established by the facility owner or operator and recorded in the facility operating record.

(iii) The facility owner or operator shall establish the schedule for use of the approved alternative cover based on the alternative cover's performance in controlling vectors, fires, odors, blowing, and scavenging. The schedule shall the following requirements:

(A) any schedule established by the facility owner or operator must provide for the placing of six inches of soil cover at least once per week;

(B) no approved alternative daily cover may be used on the day preceding a day the landfill will be closed;

(C) No alternative daily cover may be used on an area of the landfill that will not be covered with waste or an intermediate cover, as required in Subsection R315-303-4(4)(g), within two days; and

(D) The Executive Secretary may require the use of six inches of soil cover upon finding that use of an alternative cover is not controlling vectors, fires, odors, blowing liter or scavenging.

(iv) The landfill operating record must clearly document the days when an alternative cover was used and the days when soil cover was used.

(v) The Executive Secretary may revoke the use of any alternative daily cover at any landfill facility if any condition of Subsection R315-303-4(4)(c) is not met or if the alternative daily cover is determined to present a threat to human health or the environment.

(d) Materials not listed in Subsection R315-303-4(4)(b) may be used as alternative daily cover on an infrequent basis when the material meets the requirements of Subsection R315-303-4-(4)(c) and the use is documented in the facility operating record.

(e) Materials not listed in Subsection R315-303-4(4)(b) which a facility owner or operator wants to use on an ongoing

basis must be approved by the Executive Secretary. Executive Secretary approval is based on the material meeting the requirements of Subsection R315-303-4(4)(c).

(f) The Executive Secretary may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Executive Secretary may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Executive Secretary may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(g) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the Executive Secretary.

(i) No alternative intermediate cover will be approved by the Executive Secretary without application from the owner or operator.

(ii) Approval for an alternative intermediate cover may be granted after:

(A) considering the design of the landfill, waste stream accepted, and waste handling practices; and

(B) taking into account climatic, hydrogeologic, and soil conditions of the site.

(iii) In granting approval for an alternative intermediate cover, the Executive Secretary may place conditions on the owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.

(iv) The Executive Secretary may revoke the approval of an alternative intermediate cover if any condition is not met or if the use of the alternative intermediate cover is determined to present a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(7)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists. The containers shall be placed at a location convenient to the public and shall be accessible to the public during normal hours of facility operation.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste disposal facility shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in Subsections R315-2-4; or

(B) the waste meets the conditions specified in 40 CFR 261.5 (1996) as incorporated by reference in Section R315-2-5; or

(ii) waste containing PCB's:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the waste meets the requirements specified in Subsections R315-315-7(2) or (3)(b).

(b) An owner or operator of a solid waste disposal facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the Executive Secretary, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the Executive Secretary, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

KEY: solid waste management, waste disposal

February 1, 2007 **19-6-104**

Notice of Continuation February 14, 2008 **19-6-105**

19-6-108

40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV and VI Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) construction/demolition waste, inert waste, yard waste, dead animals;

(b) upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires; or

(c) upon meeting the requirements of R315-315-8(3), petroleum contaminated soils.

(2) Inert waste used as road building material and fill material are excluded from the requirements of Rule R315-305.

R315-305-2. Class IV and VI Landfill Standards for Performance.

Each Class IV and VI Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no waste from a conditionally exempt small quantity generator of hazardous waste is accepted.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IVa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IVb or VI Landfill or the expansion of an existing Class IVb or VI Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B);

(iv) the standards with respect to geology as specified in Subsections R315-302-1(2)(b)(i) and (iv);

(v) if the permit application for a new Class IVb, or VI Landfill requests approval to accept dead animals for disposal, the application shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v); and

(vi) The requirements of Subsection R315-302-1(2)(f).

(c) Exemptions from the location standards of Subsection R315-305-4(1)(b)(i), (ii), (iii), (iv), and (v) may be granted by the Executive Secretary for a new Class IVb or VI Landfill, on a site specific bases, if it is determined that the exemption will cause no adverse impact to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to meet more stringent design, construction, monitoring, or operation requirements than the minimum described in Rule R315-305 to protect human health or the environment.

(d) An existing Class IVa, IVb, or VI Landfill:

(i) shall not be subject to the location standards of Subsections R315-305-4(1)(a) or R315-305-4(1)(b)(i), (ii), (iii), or (iv); but

(ii) if the current permit of an existing Class IVa, IVb, or VI Landfill does not allow the acceptance of dead animals and the owner or operator requests approval to accept dead animals for disposal, the request to the Executive Secretary shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v).

(2) An owner or operator of a Class IV or VI Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV or VI Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV or VI Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(7)(d).

(6) An owner or operator of a Class IV or VI Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV or VI Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV or VI Landfill shall not accept any other form of waste except the wastes specified in Subsection R315-305-1(1).

(2) The owner or operator of a Class IV or VI Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV or VI Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-3(7)(g);

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;

(c) meet the requirements of Subsection R315-303-3(1)(a) and (b) to minimize liquids admitted to the landfill;

(d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and

(e) prohibit scavenging.

(4) The owner or operator of a Class IV or VI Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV or VI Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Executive Secretary.

(a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb or VI Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-303-3(4)(a)(i)(B); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Executive Secretary to minimize erosion.

(v) The Executive Secretary may approve an alternative final cover design for a Class IVb or VI Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108
19-6-109
40 CFR 257

R315. Environmental Quality, Solid and Hazardous Waste.
R315-306. Incinerator Standards.
R315-306-1. Applicability.

(1) These standards apply to any incinerator facility as specified in Subsections R315-306-2(1) and R315-306-3(1).

(2) These standards do not apply to:

(a) an incineration facility which is required to obtain a state or federal hazardous waste plan approval;

(b) a facility burning only untreated woodwaste;

(c) the flaring of gases recovered at a landfill; or

(d) a facility that incinerates or cremates exclusively human or animal remains.

R315-306-2. Requirements for Large Incinerators.

(1) These standards apply to any incinerator facility designed to incinerate more than ten tons of solid waste per day.

(2) A new incinerator facility shall be subject to the location standards of Section R315-302-1 with the exception of the following Subsections: R315-302-1(2)(a)(iv) and (v), R315-302-1(2)(e), and R315-302-1(3).

(3) Each owner or operator of an incinerator facility shall comply with Section R315-302-2. The submitted plan of operation shall also address alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage facility.

(4) The submitted plan of operation shall also contain a written waste identification plan which shall include identification of the specific waste streams to be handled by the facility, generator waste analysis requirements and procedures, waste verification procedures at the facility, generator certification of wastes shipped as being non-hazardous, and record keeping procedures, including a detailed operating record.

(5) Each incinerator facility shall be surrounded by a fence, trees, shrubbery, or natural features so as to control access and be screened from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building. Each site shall also have an adequate buffer zone of at least 50 feet from the operating area to the nearest property line in areas zoned residential to minimize noise and dust nuisances.

(6) Solid waste shall be stored temporarily in storage compartments, containers or areas specifically designed to store wastes. Storage of wastes other than in specifically designed compartments, containers or areas is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as may be required to maintain the plant in a sanitary and clean condition.

(7) A composite sample of the ash and residues from each incinerator facility shall be taken according to a sampling plan approved by the Executive Secretary.

(a) The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 2000 ed., Toxic Characteristics Leaching Procedure (TCLP) to determine if it is hazardous.

(b) If the ash and residues are found to be nonhazardous, they shall be disposed at a permitted landfill or recycled.

(c) If the ash and residues are found to be hazardous, they shall be disposed in a permitted hazardous waste disposal site.

(8) Each incinerator must be located, designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(9) An incinerator must collect and treat all run-off from the active areas of the site that may result from a 25-year storm event, and divert all run-on for the maximum flow of a 25-year storm around the site.

(10) All-weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion hazards, dust, and noise pollution.

(11) Access to the incinerator site shall be controlled by means of a complete perimeter fence or other features and gates which shall be locked when an attendant is not at the gate to prevent unauthorized entry of persons or livestock to the facility.

(12) The plan of operation shall include a training program for new employees and annual review training for all employees to ensure safe handling of waste and proper operation of the equipment.

(13) Each owner or operator shall post signs at the facility which indicate the name, hours of operation, necessary safety precautions, types of wastes that are prohibited, and any other pertinent information.

(14) Each owner or operator of an incinerator facility shall be required to provide recycling facilities in a manner equivalent to those specified for landfills in Subsection R315-303-4(6).

(15) Each owner or operator of an incinerator facility shall implement a plan to inspect loads or take other steps, as approved by the Executive Secretary, to prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's in a manner equivalent to those specified for landfills in Subsection R315-303-4(7).

(16) Each owner or operator shall close its incinerator by removing all ash, solid waste, and other residues to a permitted facility.

(17) Each owner or operator of an incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

R315-306-3. Requirements for Small Incinerators.

(1) Applicability.

(a) These requirements apply to any incinerator designed to incinerate ten tons, or less, of solid waste per day and incinerator facilities that incinerate solid waste only from on-site sources.

(b) If an incinerator processes 250 pounds, or less, of solid waste per week, the requirements of Section R315-306-3 do not apply and a permit from the Executive Secretary is not required but the facility may be regulated by other local, state, or federal requirements.

(2) Requirements.

(a) Each owner and operator of an incinerator facility shall submit a plan of operation to the Executive Secretary that meets the requirements of Section R315-302-2.

(b) The submitted plan of operation shall also address:

(i) alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage areas;

(ii) identification of the specific waste streams to be handled by the facility;

(iii) generator waste analysis requirements and procedures;

(iv) waste verification procedures at the facility;

(v) generator certification of wastes shipped as being nonhazardous; and

(vi) recordkeeping procedures, including a detailed operating record.

(c) Solid waste shall be stored temporarily only in storage compartments, containers, or areas specifically designed to store wastes.

(i) Storage of wastes other than in specifically designed compartments, containers or areas is prohibited.

(ii) Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as necessary to maintain the plant in a sanitary and clean condition.

(d) Incinerator ash and residues from any incinerator shall be sampled, analyzed, and disposed as specified in Subsection R315-306-2(7).

(e) The owner or operator of the incinerator shall prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's as specified in Subsection R315-306-2(15).

(f) The incinerator must be designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(g) The plan of operation shall include a training program for new employees and annual review training for all applicable employees to ensure safe handling of waste and proper operation of the equipment.

(h) The owner or operator of the incinerator shall close the facility by removing all solid waste, ash, and other residues to a permitted solid waste disposal facility.

(i) The owner or operator of the incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-307. Landtreatment Disposal Standards.
R315-307-1. Applicability.

(1) These standards apply to any facility that engages in the landtreatment, landfarming, or landspreading disposal of solid waste.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste or other primarily organic sludge in recycling operations as specified in Section R315-312-4;

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues;

(c) inert waste[or demolition waste; or

(d) industrial solid waste facilities.

(3) The landtreatment of domestic sewage sludge and septage is exempt from the requirements of Rule R315-307 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(4) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in Subsection R315-303-2.

(5) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat all run-off from a 25 year storm, and divert all run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(6)(d).

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage or infectious waste;

(2) avoid applying wastes at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and all other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Executive Secretary is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

R315-307-4. Standards for Closure.

(1) The owner or operator of a landtreatment disposal facility shall:

(a) close in a manner to comply with Section R315-302-3; and

(b) meet the financial assurance requirements of Rule R315-309.

(3) Upon closure of a landtreatment disposal facility, the owner or operator shall record with the county recorder as part of the record of title the fact that the property has been used as a landtreatment disposal facility pursuant to Subsection R315-302-2(6).

KEY: solid waste management, waste disposal
July 1, 2001 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-308. Ground Water Monitoring Requirements.
R315-308-1. Applicability.

(1) Each existing landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Executive Secretary during the permitting or the permit renewal process.

(2) Prior to the acceptance of waste, each new landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall have:

(a) a site specific ground water monitoring plan approved by the Executive Secretary; and

(b) the ground water monitoring system complete and operational.

(3) Ground water monitoring requirements may be waived by the Executive Secretary if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Executive Secretary.

(5) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Executive Secretary if the operation of the facility impacts groundwater.

R315-308-2. Ground Water Monitoring Requirements.

(1) Each facility owner or operator that is required to conduct ground water monitoring shall formulate a ground water monitoring plan that addresses the requirements of Section R315-308-2.

(2) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Executive Secretary in complicated hydrogeological settings or to define the extent of contamination detected.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water-bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control or sample tracking, as approved by the Executive Secretary; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(5) Each facility shall utilize a laboratory, that is certified by the state for the test methods used, to complete tests, using methods with appropriate detection levels, on samples for the following:

(a) during the first year of facility operation after wells are installed or an alternative schedule as approved by the Executive Secretary, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field-measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Executive Secretary may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) The following information shall be placed in the facility's operating record and a copy submitted to the Executive Secretary as the ground water monitoring results to be included in the annual report required by Subsection R315-302-2(4):

(i) a report on the procedures, including the quality control/quality assurance, followed during the collection of the ground water samples;

(ii) the results of the field measured parameters required by Subsections R315-308-2(5)(c) and R315-308-2(7);

(iii) a report of the chain of custody and quality control/quality assurance procedures of the laboratory;

(iv) the results of the laboratory analysis of the constituents specified in Section R315-308-4 or an alternative

list of constituents approved by the Executive Secretary:

(A) the results of the laboratory analysis shall list the constituents by name and CAS number; and

(B) a list of the detection limits and the test methods used; and

(v) the statistical analysis of the results of the ground water monitoring as required by Subsection R315-308-2(8).

(vi) The results of the ground water monitoring may be submitted in electronic format.

(6) After background constituent levels have been established, a ground water quality protection standard shall be set by the Executive Secretary which shall become part of the ground water monitoring plan. The ground water quality protection standard will be set as follows.

(a) For constituents with background levels below the standards listed in Section R315-308-4 or as listed in Section R315-308-5, which presents the ground water protection standards that are available for the constituents listed as Appendix II in 40 CFR 258, the ground water quality standards of Sections R315-308-4 and R315-308-5 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or Section R315-308-5 the ground water quality protection standard for that constituent shall be set according to health risk standards.

(c) If a constituent is detected and a background level is established and the established background level is higher than the value listed in Section R315-308-4, R315-308-5 or the level established according to Subsection R315-308-2(6)(b), the ground water quality protection standard shall be the background concentration.

(7) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(8) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Executive Secretary will approve such a method as part of the ground water monitoring plan. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Executive Secretary.

(9) For both detection monitoring, as described in Subsection R315-308-2(5), and assessment monitoring, as described in Subsection R315-308-2(12), the Executive Secretary may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site-specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(10) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(11) If the owner or operator determines that there is a statistically significant increase over background in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, enter the information in the operating record and notify the Executive Secretary of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Executive Secretary, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant increase over background of any parameter or constituent in any monitoring well at the compliance point; and

(iii) notify the Executive Secretary in writing within seven days of the completion of the statistical analysis of the sample results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(5)(b).

(12) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(11)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) within 14 days of the determination that a successful demonstration is not made, take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 2001 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of four independent samples from the upgradient and four independent samples from each downgradient well must be collected, analyzed, and statistically evaluated to establish background concentration levels for the constituents; and

(c) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, place a notice in the operation record and notify the Executive Secretary in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Executive Secretary shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(6) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) at a minimum, all downgradient wells on a quarterly

basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258;

(ii) the downgradient wells on an annual basis for all constituents in Appendix II, 40 CFR Part 258; and

(iii) statistically analyze the results of all ground water monitoring samples.

(e) The Executive Secretary may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(12)(d)(i) are shown to be at or below established background values, the owner or operator must notify the Executive Secretary of this finding and may, upon the approval of the Executive Secretary, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(5)(b).

(13) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(6) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Executive Secretary and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(13)(b) and (13)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(12)(d) or Subsection R315-308-2(12)(e) when applicable.

R315-308-3. Corrective Action Program.

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(13)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(12)(d).

(b) take any interim measures as required by the Executive Secretary or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Executive Secretary.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Executive Secretary.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Executive Secretary for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Executive Secretary of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Executive Secretary will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Executive Secretary may also require facility closure if the ground water quality standard is exceeded and, in addition, may revoke any permit and require reapplication.

(b) The Executive Secretary or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In such a case, the owner or operator must implement other methods or techniques, upon approval by the Executive Secretary, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator shall notify the Executive Secretary. The notification shall contain certification signed by the owner or operator and a qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Executive Secretary. Upon approval of the Executive secretary the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(5)(b); and

(iii) be released from the requirements of financial assurance for corrective action.

R315-308-4. Constituents for Detection Monitoring.

The table lists the constituents for detection monitoring as specified by Subsection R315-308-2(5), the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

Inorganic Constituents	CAS	Ground Water Protection Standard (mg/l)
Ammonia (as N)	7664-41-7	
Carbonate/Bicarbonate		
Calcium		
Chemical Oxygen Demand (COD)		
Chloride		
Iron	7439-89-6	
Magnesium		
Manganese	7439-96-5	
Nitrate (as N		
pH		
Potassium		
Sodium		
Sulfate		
Total Dissolved Solids (TDS)		
Total Organic Carbon (TOC)		
Heavy Metals		
Antimony	7440-36-0	0.006
Arsenic	7440-38-2	0.01
Barium	7440-39-3	2
Beryllium	7440-41-7	0.004
Cadmium	7440-43-9	0.005
Chromium		0.1
Cobalt	7440-48-4	2
Copper	7440-50-8	1.3
Lead		0.015
Mercury	7439-97-6	0.002
Nickel	7440-02-0	0.1
Selenium	7782-49-2	0.05
Silver	7440-22-4	0.1
Thallium		0.002
Vanadium	7440-62-2	0.3
Zinc	7440-66-6	5
Organic Constituents		
Acetone	67-64-1	4
Acrylonitrile	107-13-1	0.1
Benzene	71-43-2	0.005
Bromochloromethane	74-97-5	0.01
Bromodichloromethane[1]	75-27-4	0.1
Bromoform[1]	75-25-2	0.1
Carbon disulfide	75-15-0	4
Carbon tetrachloride	56-23-5	0.005
Chlorobenzene	108-90-7	0.1
Chloroethane	75-00-3	15
Chloroform[1]	67-66-3	0.1
Dibromochloromethane[1]	124-48-1	0.1
1,2-Dibromo-3-chloropropane	96-12-8	0.0002
1,2-Dibromoethane	106-93-4	0.00005
1,2-Dichlorobenzene (ortho)	95-50-1	0.6
1,4-Dichlorobenzene (para)	106-46-7	0.075
trans-1,4-Dichloro-2-butene	110-57-6	
1,1-Dichloroethane	75-34-3	4
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
cis-1,2-Dichloroethylene	156-59-2	0.07
trans-1,2-Dichloroethylene	156-60-5	0.1
1,2-Dichloropropane	78-87-5	0.005
cis-1,3-Dichloropropene	10061-01-5	0.002
trans-1,3-Dichloropropene	10061-02-6	0.002
Ethylbenzene	100-41-4	0.7
2-Hexanone	591-78-6	1.5
Methyl bromide	74-83-9	0.01
Methyl chloride	74-87-3	0.003
Methylene bromide	74-95-3	0.4
Methylene chloride	75-09-2	0.005
Methyl ethyl ketone	78-93-3	0.17
Methyl iodide	74-88-4	
4-Methyl-2-pentanone	108-10-1	3
Styrene	100-42-5	0.1
1,1,1,2-Tetrachloroethane	630-20-6	0.07
1,1,2,2-Tetrachloroethane	79-34-5	0.005
Tetrachloroethylene	127-18-4	0.005
Toluene	108-88-3	1
1,1,1-Trichloroethane	71-55-6	0.2
1,1,2-Trichloroethane	79-00-5	0.005
Trichloroethylene	79-01-6	0.005
Trichlorofluoromethane	75-69-4	10
1,2,3-Trichloropropane	96-18-4	0.04
Vinyl acetate	108-05-4	37
Vinyl Chloride	75-01-4	0.002
Xylenes	1330-20-7	10

[1]The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

R315-308-5. Solid Waste Ground Water Quality Protection Standards for 40 CFR 258 Appendix II Constituents.

The table lists the CAS number for each constituent and the ground water quality protection standards which are currently available for the 40 CFR 258 Appendix II constituents required for assessment monitoring of ground water at a solid waste facility as specified by Subsection R315-308-2(12).

TABLE

Appendix II Protection Standards

Appendix II Constituent	CAS	Ground Water Protection Standard (mg/l)
2,4-D	94-75-7	0.07
2,4,5-T	93-76-5	0.37
2,4,5-TP	93-72-1	0.05
Anthracene	120-12-7	10
Benzo(a)pyrene	50-32-8	0.0002
bis(2-Ethylhexy)phthalate	117-81-7	0.006
Chlordane	57-74-9	0.002
Cyanide	57-12-5	0.2
Dinoseb	88-85-7	0.007
Endrin	72-20-8	0.002
Heptachlor	76-44-8	0.0004
Heptachlor epoxide	1024-57-3	0.0002
Hexachlorobenzene	118-74-1	0.001
Hexachlorocyclopentadiene	77-47-4	0.05
Lindane	58-89-9	0.0002
Methoxychlor	72-43-5	0.04
Pentachlorophenol	87-86-5	0.001
Polychlorinated biphenyls(PCBs)	1336-36-3	0.0005
Tin	7440-31-5	21.9
Toxaphene	8001-35-2	0.003
1,2,4-Trichlorobenzene	120-82-1	0.07

KEY: solid waste management, waste disposal
February 1, 2007 19-6-105
Notice of Continuation February 14, 2008 40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-309. Financial Assurance.
R315-309-1. Applicability.

(1) The owner or operator of any solid waste disposal facility requiring a permit shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Executive Secretary.

(2) Financial assurance is not required for a solid waste disposal facility that is owned or operated by the State of Utah or the Federal government.

(3) Existing Facilities.

(a) An existing facility shall have the financial assurance mechanism in place and effective according to the compliance schedule as established for the facility by the Executive Secretary.

(b) In the case of corrective action, the financial assurance mechanism shall be in place and effective no later than 120 days after the corrective action remedy has been selected.

(4) A new facility or an existing facility seeking lateral expansion shall have the financial assurance mechanism in place and effective before the initial receipt of waste at the facility or the lateral expansion.

R315-309-2. General Requirements.

(1) A financial assurance plan, including the assurance mechanism proposed for use, shall be submitted:

(a) for new facilities, upon initial permit application; and

(b) for existing facilities, to meet the effective dates specified in Subsection R315-309-1(3).

(2) The financial assurance shall be updated each year as part of the annual report required by Subsection R315-302-2(4) to adjust for inflation or facility modification that would affect closure or post-closure care costs. The annual update of the financial assurance shall be reviewed and must be approved by the Executive Secretary prior to implementation.

(3) Financial assurance cost estimates shall be based on a third party preforming closure or post-closure care.

(a) The closure cost estimate shall be based on the most expensive cost to close the largest area of the disposal facility ever requiring a final cover at any time during the active life in accordance with the closure plan and at a minimum must contain the following elements if applicable:

(i) the cost of obtaining, moving, and placing the cover material;

(ii) the cost of final grading of the cover material;

(iii) the cost of moving and placing topsoil on the final cover;

(iv) the cost of fertilizing, seeding, and mulching or other approved method; and

(v) the cost of removing any stored items or materials, buildings, equipment, or other items or materials not needed at the closed facility.

(b) The post-closure care cost estimate shall be based on the most expensive cost of completing the post-closure care reasonably expected during the post-closure care period and must contain the following elements:

(i) ground water monitoring, if required, including number of monitor wells, parameters to be monitored, frequency of sampling, and cost per sampling;

(ii) leachate monitoring and treatment if necessary;

(iii) gas monitoring and control if required; and

(iv) cover stabilization which will include an estimate of the area and cost for expected annual work to repair residual settlement, control erosion, or reseed.

(4) Any facility for which financial assurance is required for post-closure care must have a financial assurance mechanism, which will cover the costs of post-closure care, in effect and active until the Executive Secretary determines that the post-closure care is complete.

(5) Financial assurance for corrective action shall be required only in cases of known releases of contaminants from a facility and shall be a current cost estimate for corrective action based on the most expensive cost of a third party performing the corrective action that may be required.

R315-309-3. General Requirements for Financial Assurance Mechanisms.

(1) Any financial assurance mechanism in place for a solid waste facility:

(a) must be legally valid, binding, and enforceable under Utah and Federal law;

(b) must ensure that funds will be available in a timely fashion when needed; and

(c) any financial assurance mechanism that guarantees payment rather than performance, but does not allow the Executive Secretary to approve partial payments to a third party, shall establish a standby trust at the time the financial assurance mechanism is established.

(i) In the case of a financial assurance mechanism for which the establishment of a standby trust is required, the standby trust fund shall meet the requirements of Subsections R315-309-4(1), (2), and (4).

(ii) Payments from the financial assurance mechanism shall be deposited directly into the standby trust fund and payments from the standby trust fund must be approved by the Executive Secretary and the trustee.

(2) The owner or operator of a solid waste facility that is required to provide financial assurance:

(a) shall submit the required documentation of the financial assurance mechanism to the Executive Secretary;

(b) prior to the financial assurance mechanism becoming effective and active for a solid waste facility, the mechanism must be approved by the Executive Secretary; and

(c) Financial assurance mechanism documents submitted to the Executive Secretary shall be signed originals or signed duplicate originals.

(3) The owner or operator of a solid waste facility may establish financial assurance by any mechanism that meets the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary.

(4) The owner or operator of a solid waste facility may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary. Except for the conditions specified in Subsection R315-309-8(6)(c), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

R315-309-4. Trust Fund.

(1) The owner or operator of a solid waste facility may establish a trust fund and appoint a trustee as a financial assurance mechanism. The trust fund and trustee must be with an entity that has the authority to establish trust funds and act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(2) The owner or operator shall submit a signed original of the trust agreement to the Executive Secretary for approval and shall place a signed original of the trust agreement in the operating record of the solid waste disposal facility.

(3) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(a) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within the permit term or the remaining life of the facility, whichever is shorter for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust

fund must be made, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); or

(b) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(5). Payments shall be determined as follows:

(i) The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(ii) The amount of subsequent payments must be determined by the following formula: Next Payment = (RB-CV)/Y where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total cost that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator, or other person authorized to conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(a) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Executive Secretary. The Executive Secretary shall act upon the reimbursement request within 30 days of receiving the request.

(b) After receiving approval from the Executive Secretary, the request for reimbursement may be granted by the trustee only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(c) The owner or operator shall notify the Executive Secretary that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

R315-309-5. Surety Bond Guaranteeing Payment or Performance.

(1) The owner or operator of a solid waste facility may provide a surety bond for a financial assurance mechanism. The bond must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator must notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(3) The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimates of Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(4) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(a) In the case of a payment bond, the surety shall pay the costs of closure and post-closure care if the owner or operator fails to complete closure and post-closure care activities.

(b) In the case of a performance bond, the surety shall perform closure and post-closure care on behalf of the owner or operator if the owner or operator fails to complete closure and post-closure care activities.

(5) The surety bond guaranteeing payment or performance shall contain provisions preventing cancellation except under the following conditions:

(a) if the surety sends notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of the cancellation date; or

(b) if an alternative financial assurance mechanism has been obtained by the owner or operator.

R315-309-6. Insurance.

(1) The owner or operator of a solid waste facility may provide insurance as a financial assurance mechanism. The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Executive Secretary that a copy of the insurance policy has been placed in the operating record.

(3) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds, as directed in writing by the Executive Secretary, to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

(4) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(5) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Executive Secretary that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(6) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(7) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(8) The insurer shall certify through the use of an insurance endorsement specified by the Executive Secretary that the policy issued provides insurance covering closure costs, post-closure costs, or corrective action costs.

R315-309-7. Letter of Credit.

(1) The owner or operator of a solid waste facility may provide a letter of credit as a financial assurance mechanism. The letter of credit must be irrevocable and issued for a period of at least one year in the amount at least equal to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care or the cost estimate as required by Subsection R315-309-2(5) for corrective action, if necessary.

(2) The institution issuing the letter of credit must be an entity which has the authority to issue a letter of credit and whose operations are regulated and examined by a Federal or state agency.

(3) The letter of credit must be effective for closure and post-closure care:

(a) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(b) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(c) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has elected not to extend the letter of credit by sending notice by certified mail to the owner or operator and the Executive Secretary 120 days in advance of the expiration.

(5) If the letter of credit is not extended by the issuing institution, the owner or operator shall obtain alternate financial assurance which will become effective on or before the expiration date.

R315-309-8. Local Government Financial Test.

(1) The terms used in Section R315-309-8 are defined as follows.

(a) "Total revenues" means the revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue form funds managed by local government on behalf of a specific third party.

(b) "Total expenditures" means all expenditures excluding capital outlays and debt repayments.

(c) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(d) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) A local government owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate as required by Subsection R315-309-2(5) for corrective action, if required, or up to the amount specified in Subsection R315-309-8(6), which ever is less, by meeting the following requirements.

(a) If the local government has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or other guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on such general obligation bonds.

(b) If the local government has no outstanding general obligation bonds, the local government shall satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(c) The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(d) The local government must place a reference to the closure and post-closure care costs assured through the financial test into the next comprehensive annual financial report and in every subsequent comprehensive annual financial report during the time in which closure and post-closure care costs are assured through the financial test. A reference to corrective action costs must be placed in the comprehensive annual financial report not later than 120 days after the corrective action remedy has been selected. The reference to the closure and post-closure care costs shall contain:

(i) the nature and source of the closure and post-closure care requirements;

(ii) the reported liability at the balance sheet date;

(iii) the estimated total closure and post-closure care costs remaining to be recognized;

(iv) the percentage of landfill capacity used to date; and

(v) the estimated landfill life in years.

(3) A local government is not eligible to assure closure, post-closure care, or corrective action costs at its solid waste disposal facility through the financial test if it:

(a) is currently in default on any outstanding general obligation bonds, or

(b) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(c) has operated at a deficit equal to 5%, or more, of the total annual revenue in each of the past two fiscal years; or

(d) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant, or appropriate state agency auditing its financial statement. The Executive Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Executive Secretary deems the qualification insufficient to warrant disallowance of use of the test.

(4) The local government owner or operator must submit the following items to the Executive Secretary for approval and place a copy of these items in the operating record of the facility:

(a) a letter signed by the local government's chief financial officer that:

(i) lists all current cost estimates covered by a financial test; and

(ii) provides evidence and certifies that the local government meets the requirements of Subsections R315-309-8(2) and R315-309-8(6);

(b) the local government's independently audited year-end financial statements for the latest fiscal year including the unqualified opinion of the auditor, who must be an independent certified public accountant;

(c) a report to the local government from the local government's independent certified public accountant stating the procedures performed and the findings relative to:

(i) the requirements of Subsections R315-309-8(2)(c) and R315-309-8(3)(c) and (d); and

(ii) the financial ratios required by Subsection R315-309-8(2)(b), if applicable; and

(d) a copy of the comprehensive annual financial report used to comply with Subsection R315-309-8(2)(d).

(e) The items required by Subsection R315-309-8(4) are to be submitted to the Executive Secretary and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year.

(a) The items required in Subsection R315-309-8(4) shall be submitted as part of the facility's annual report required by Subsection R315-302-2(4).

(b) If the local government no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the local government's

fiscal year:

(i) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(ii) submit documentation of the alternative financial assurance to the Executive Secretary and place copies of the documentation in the facility's operating record.

(c) The Executive Secretary, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Executive Secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall be required to provide alternative financial assurance on a schedule established by the Executive Secretary.

(6) The portion of the closure, post-closure, and corrective action costs for which a local government owner or operator may assume under the local government financial test is determined as follows:

(a) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(b) If the local government assures any other environmental obligation through a financial test, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure by local government financial test. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(c) The local government shall obtain an alternate financial assurance mechanism for those costs that exceed 43% of the local government's total annual revenue.

(7) Local Government Guarantee.

(a) An owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government. The local government providing the guarantee shall meet the requirements of the local government financial test in Section R315-309-8 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-8(7)(b) and (c).

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Secretary. Cancellation may not occur until 120 days after the date the notice is received by the Executive Secretary.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Executive Secretary; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Executive Secretary for review and approval, and place copies of the documentation in the facility's operating record.

R315-309-9. Corporate Financial Test.

(1) The terms used specifically in Section R315-309-9 are defined as follows.

(a) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c) (2001) which is adopted and incorporated by reference.

(e) "Independently audited" means an audit performed by and independent certified public accountant in accordance with generally accepted auditing standards.

(f) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(g) "Net working capital" means current assets minus current liabilities.

(h) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(i) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(2) A corporate owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate required by Subsection R315-309-2(5) for corrective action, if required, by meeting the following requirements.

(a) The owner or operator must satisfy one of the following three conditions:

(i) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

(ii) a ratio of less than 1.5 comparing total liabilities to net worth: or

(iii) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(b) The tangible net worth of the owner or operator must be greater than:

(i) the sum of the current closure, post-closure care, and corrective action cost estimates and any other environmental obligation, including guarantees, covered by a financial test plus $10 million except as provided in Subsection R315-309-9(2)(b)(ii);

(ii) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited

financial statements, and subject to the approval of the Executive Secretary.

(c) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test.

(3) The owner or operator must place the following items into the facility's operating record and submit a copy of these items to the Executive Secretary for approval:

(a) a letter signed by the owner's or operator's chief financial officer that:

(i) lists all current cost estimates for closure, post-closure care, corrective action, and any other environmental obligations covered by a financial test; and

(ii) provides evidence demonstrating that the firm meets the conditions of Subsection R315-309-9(2)(a)(i), or (a)(ii), or (a)(iii) and Subsections R315-309-9(2)(b) and (c); and

(b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year.

(i) To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant.

(ii) The Executive Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test where the Executive Secretary deems the matters which form the basis for the qualification are insufficient to warrant disallowance of the test.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-309-9(2)(a)(i) or (ii) that are different from data in the audited financial statements or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant is required. The special report shall:

(i) be based upon an agreed upon procedures engagement in accordance with professional auditing standards;

(ii) describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements;

(iii) describe the findings of that comparison; and

(iv) explain the reasons for any differences.

(d) If the chief financial officer's letter provides a demonstration that the firm has assured environmental obligations as provided in Subsection R315-309-9(2)(b)(ii), then the letter shall include a report from the independent certified public accountant that:

(i) verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements;

(ii) explains how these obligations have been measured and reported; and

(iii) certifies that the tangible net worth of the firm is at least $10 million plus the amount of all guarantees provided.

(e) The items required by Subsection R315-309-9(3) are to be submitted to the Executive Secretary and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) A firm must satisfy the requirements of the financial test at the close of each fiscal year by submitting the items required in Subsection R315-309-9(3) as part of the facility's annual report required by Subsection R315-302-2(4).

(5) If the firm no longer meets the requirements of the corporate financial test it shall, within 120 days following the close of the firm's fiscal year:

(a) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(b) submit documentation of the alternative financial assurance to the Executive Secretary and place copies of the documentation in the facility's operating record.

(c) The Executive Secretary, based on a reasonable belief that the firm may no longer meet the requirements of the corporate financial test, may require additional reports of financial condition from the firm at any time. If the Executive Secretary finds that the firm no longer meets the requirements of the corporate financial test, firm shall be required to provide alternative financial assurance on a schedule established by the Executive Secretary.

(6) Corporate Guarantee.

(a) A corporate owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure care, and corrective action by obtaining a written guarantee provided by a corporation.

(i) The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator.

(ii) The firm shall meet the requirements of the corporate financial test in Section R315-309-9 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(6)(b) and (c).

(A) A certified copy of the guarantee along with copies of the letter from the guarantor's chief financial officer and accountant's opinions must be submitted to the Executive Secretary and placed in the facility's operating record.

(B) If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee.

(C) If the guarantor is a firm with a substantial business relationship with the owner or operator, the letter from the chief financial officer must describe this substantial business relationship and the value received in consideration of the guarantee.

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Secretary. Cancellation may not occur until 120 days after the date the notice is received by the Executive Secretary.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Executive Secretary; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Executive Secretary for review and approval, and place copies of the documentation in the facility's operating record.

(f) If a corporate guarantor no longer meets the requirements of the corporate financial test as specified in Section R315-309-9:

(i) the owner or operator must, within 90 days, obtain alternate financial assurance; and

(ii) submit documentation of the alternate financial assurance to the Executive Secretary and place copies of this documentation in the facility's operating record.

(iii) If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

R315-309-10. Discounting.

(1) The Executive Secretary may allow discounting of closure, post-closure care, or corrective action costs up to the rate of return for essentially risk free investments, net inflation.

(2) Discounting may be allowed under the following conditions:

(a) the Executive Secretary determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer registered in the state of Utah so stating;

(b) the Executive Secretary finds the facility in compliance with all applicable Utah Solid Waste Permitting and Management Rules and in compliance with all conditions of the facility's permit issued under the rules;

(c) the executive Secretary determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the facility life; and

(d) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

R315-309-11. Termination of Financial Assurance.

The owner or operator of a solid waste facility may terminate or cancel an active financial assurance mechanism under the following conditions:

(1) if the owner or operator establishes alternate financial assurance as approved by the Executive Secretary; or

(2) if the owner or operator is released from the financial assurance requirements by the Executive Secretary after meeting the conditions and requirements of Subsections R315-302-3(7)(b) and (c) or Subsection R315-308-3(2)(c), whichever is applicable.

KEY: solid waste management, waste disposal
February 1, 2007 19-6-105
Notice of Continuation February 14, 2008 40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) New and existing Class I, II, III, IV, V, and VI Landfills;

(b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(c) incinerator facilities that are regulated by Rule R315-306;

(d) land treatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of Rule R315-310 apply to each existing and new solid waste facility, for which a permit is required.

(a) The Executive Secretary may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Executive Secretary for the desired class, or subclass, of landfill.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Executive Secretary to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Executive Secretary. Two copies of the application, signed by the owner or operator and received by the Executive Secretary are required before permit review can begin.

(3) Applications for a permit must be completed in the format prescribed by the Executive Secretary.

(4) An application for a permit, all reports required by a permit, and other information requested by the Executive Secretary shall be signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president;

(b) for a partnership or sole proprietorship: by a general partner or the proprietor;

(c) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

(d) by a duly authorized representative of the person above, as appropriate.

(i) A person is a duly authorized representative only if the authorization is made in writing, to the Executive Secretary, by a person described in Subsections R315-310-2(4)(a), (b), or (c), as appropriate.

(ii) The authorization may specify either a named individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, director, superintendent, or other position of equivalent responsibility.

(iii) If an authorization is no longer accurate and needs to be changed because a different individual or position has responsibility for the overall operation of the facility, a new authorization that meets the requirements of Subsections R315-310-2(4)(d)(i) and (ii) shall be submitted to the Executive Secretary prior to or together with any report, information, or application to be signed by the authorized representative.

(5) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(6) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(7) The owner or operator, or both, of a facility shall apply for renewal of the facility's permit every ten years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application for a new facility or a facility seeking expansion shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class IIIb, IVb, and Class VI Landfills and waste tire storage facilities, unless required by the Executive Secretary, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Executive Secretary of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality;

(j) a proposed financial assurance plan that meets the requirements of Rule R315-309; and

(k) A historical and archeological identification efforts, which may include an archaeological survey conducted by a person holding a valid license to conduct surveys issued under R694-1.

(2) Public Participation Requirements.

(a) Each permit application shall provide:

(i) the name and address of all owners of property within 1,000 feet of the proposed solid waste facility; and

(ii) documentation that a notice of intent to apply for a permit for a solid waste facility has been sent to all property owners identified in Subsection R315-310-3(3)(a)(i).

(iii) the Executive Secretary with the name of the local government with jurisdiction over the site and the mailing address of that local government office.

(b) The Executive Secretary shall send a letter to each person identified in Subsection R315-310-3(3)(a)(i) and (iii) requesting that they reply, in writing, if they desire their name to be placed on an interested party list to receive further public information concerning the proposed facility.

(3) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsections 19-6-108(9) and (10).

(b) Subsequent to the issuance of a solid waste permit by the Executive Secretary, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Executive Secretary that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the solid waste disposal facility may not begin until the requirements of Subsections R315-310-3(2)(b) are met and approval to begin construction has been granted by the Executive Secretary.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a), (b), and (c).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, and VI Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, and VI Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring plan that meets the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meets the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of the solid waste disposal facility in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a post-closure plan to address, as appropriate for the specific landfill:

(i) site monitoring of:

(A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met;

(B) ground water on a semiannual basis, or other schedule as determined by the Executive Secretary, until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met; and

(C) surface water, if required, on the schedule specified by the Executive Secretary and until the Executive Secretary determines that the monitoring of surface water may be discontinued;

(ii) inspections of the landfill by the owner or operator:

(A) for landfills that are required to monitor landfill gas, and Class II Landfills, on a quarterly basis; and

(B) for other landfills that are not required to monitor landfill gas, on a semiannual basis;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost

calculations and the funding mechanism;

(v) changes to record of title as specified by Subsection R315-302-2(6); and

(vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanding Class III, IV, or VI Landfill.

(1) Each application for a permit for a new Class III, IV, or VI landfill or for a permit to expand an existing Class III, IV, or VI Landfill shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the area to be served by the facility; and

(e) how the facility will meet the requirements of Rule R315-304, for a Class III Landfill, or Rule R315-305, for a Class IV or VI Landfill.

(3) Each application for a Class IIIa or Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Incinerator Facility.

(1) Each application for a new or expanding incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(ii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule;

(ii) closure costs and a financial assurance mechanism to cover the closure costs;

(iii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iv) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-310-3(1)(a), (b), (c), (f), (g), (h), (k), R315-310-3(2) and Subsection R315-314-3(3).

R315-310-9. Contents of an Application for a Permit Renewal.

The owner or operator, or both, where the owner and operator are not the same person, of each existing facility who intend to have the facility continue to operate, shall apply for a renewal of the permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Applicable information, that was submitted to the Executive Secretary as part of a previous permit application, may be copied and included in the permit renewal application so that all required information is contained in one

document. The information submitted shall reflect the current operation, monitoring, closure, post-closure, and all other aspects of the facility as currently established at the time of the renewal application submittle.

R315-310-10. Contents of an Application for a Permit for a Facility in Post-Closure Care.

The application for a Post-Closure Care permit shall contain the applicable information required in Section R315-310-3 and documentation as to how the facility will meet the requirements of Section R315-302-3(5) and (6).

R315-310-11. Permit Transfer.

(1) A permit may not be transferred without approval from the Executive Secretary, nor shall a permit be transferred from one property to another.

(2) The new owner or operator shall submit to the Executive Secretary:

(a) A revised permit application no later than 60 days prior to the scheduled change and

(b) A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the permittee has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit and R315-309 for the operation of the facility.

(4) When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Rule R315-309 until the new owner or operator has demonstrated that it is complying with the requirements of that rule.

(5) An application for permit transfer may be denied if the Executive Secretary finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Executive Secretary;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-105**
Notice of Continuation February 14, 2008 **19-6-108**
19-6-109
40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Executive Secretary, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Executive Secretary.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Executive Secretary has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Executive Secretary, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Executive Secretary on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Executive Secretary and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Executive Secretary.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Executive Secretary determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Executive Secretary may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Executive Secretary determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Executive Secretary will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63 Chapter 46b, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Executive Secretary in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Executive Secretary not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-312. Recycling and Composting Facility Standards.
R315-312-1. Applicability.

(1) The standards of Rule R315-312 apply to any facility engaged in recycling or utilization of solid waste on the land including:

(a) composting;

(b) utilization of organic sludge, other than domestic sewage sludge and septage, and untreated woodwaste on land for beneficial use; and

(c) accumulation of wastes in piles for recycling or utilization.

(2) These standards do not apply to:

(a) animal feeding operations, including dairies, that compost exclusively manure and vegetative material and meet the composting standards of a Comprehensive Nutrient Management Plan;

(b) other composting operations in which waste from on-site is composted and the finished compost is used on-site; or

(c) hazardous waste.

(3) These standards do not apply to any facility that recycles or utilizes solid wastes solely in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers.

(4) The composting of domestic sewage sludge, on the site of its generation, is exempt from the requirements of Rule R315-312 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(5) Effective dates. An existing facility recycling or composting solid waste shall be placed upon a compliance schedule to assure compliance with the requirements of Rule R315-312 on or before a date established by the Executive Secretary.

R315-312-2. Recycling and Composting Requirements.

(1) Any recycling or composting facility shall meet the requirements of Section R315-302-2, and shall submit a general plan of operation and such other information as requested by the Executive Secretary prior to the commencement of any recycling operation.

(2) Each applicable recycling or composting facility shall submit a certification that the facility has, during the past year, operated according to the submitted plan of operation to the Executive Secretary by March 1 of each year.

(3) Any facility storing materials in outdoor piles for the purpose of recycling shall be considered to be disposing of solid waste if:

(a) at least 50% of the material on hand at the beginning of a year at the facility has not been shown to have been recycled by the end of that year and any material has been on-site more than two years unless a longer period is approved by the Executive Secretary; or

(b) ground water or surface water, air, or land contamination has occurred or is likely to occur under current conditions of storage.

(c) Upon a determination by the Executive Secretary or his authorized representative that the limits of Subsection R315-312-2(3)(a) or (b) have been exceeded, the Executive Secretary may require a permit application and issuance of a permit as a solid waste disposal facility.

(4) Any recycling or composting facility may be required to provide financial assurance for clean-up and closure of the site as determined by the Executive Secretary.

(5) Tires stored in piles for the purpose of recycling at a tire recycling facility shall be subject to the requirements of Section R315-314-3.

R315-312-3. Composting Requirements.

(1) No new composting facility shall be located in the following areas:

(a) wetlands, watercourses, or floodplains; or

(b) within 500 feet of any permanent residence, school, hospital, institution, office building, restaurant, or church.

(2) Each new compost facility shall meet the requirements of Subsection R315-302-1(2)(f)

(3) Each owner or operator of a composting facility, in addition to the operational plan required in Subsection R315-312-2(1), shall develop, keep on file, and abide by a plan that addresses:

(a) detailed plans and specifications for the entire composting facility including manufacturer's performance data for equipment;

(b) methods of measuring, grinding or shredding, mixing, and proportioning input materials;

(c) a description and location of temperature and other types of monitoring equipment and the frequency of monitoring;

(d) a description of any additive material, including its origin, quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

(f) estimated composting time duration, which is the time period from initiation of the composting process to completion;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity; and

(i) a description of the ultimate use for the finished compost, the method for removal from the site, and a plan for the disposal of the finished compost that can not be used in the expected manner due to poor quality or change in market conditions.

(4) Composting Facility Operation Requirements.

(a) Operational records must be maintained during the life of the facility and during the post-closure care period, which include, at a minimum, temperature data and quantity and types of material processed.

(b) All waste materials collected for the purpose of processing must be processed within two years or as provided in the plan of operation.

(c) All materials not destined for processing must be properly disposed.

(d) Turning frequency of the compost must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame.

(e) During the composting process, the compost must:

(i) maintain a temperature between 104 and 149 degrees Fahrenheit (40 and 65 degrees Celsius) for a period of not less than five days; and

(ii) reach a temperature of not less than 131 degrees F (55 degrees C) for a consecutive period of not less than four hours during the five day period.

(f) The following wastes may not be accepted for composting:

(i) asbestos waste;

(ii) Hazardous waste;

(iii) waste containing PCBs; or

(iv) treated wood.

(g) Any composting facility utilizing municipal solid waste, municipal sewage treatment sludge, water treatment sludge, or septage shall require the generator to characterize the material and certify that any material used is nonhazardous, contains no PCB's, and contains no treated wood.

(h) If the composting operation will be utilizing domestic sewage sludge, septage, or municipal solid waste:

(i) compost piles or windrows shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile or windrow, to prevent contamination of subsurface soil, ground water, or both and to allow collection

of run-off and leachate. The liner shall be of sufficient thickness and strength to withstand stresses imposed by compost handling vehicles and the compost itself;

(ii) run-off systems shall be designed, installed and maintained to control and collect the run-off from a 25-year storm event;

(iii) the collected leachate shall be treated in a manner approved by the Executive Secretary; and

(iv) run-on prevention systems shall be designed, constructed, and maintained to divert the maximum flow from a 25-year storm event.

(i) If the Executive Secretary determines that a composting operation, which composts materials other than domestic sewage sludge, septage, or municipal solid waste, is likely to produce a leachate that in combination with the hydrologic, geologic, and climatic factors of the site will present a threat to human health or the environment, the Executive Secretary may require the owner or operator of the composting facility to meet the requirements specified in Subsection R315-312-3(4)(h).

(j) The finished compost must contain no sharp inorganic objects and must be sufficiently stable that it can be stored or applied to land without creating a nuisance, environmental threat, or a hazard to health.

(5) Composting Facility Closure and Post-closure Requirements.

(a) Within 30 days of closure, a composting facility shall:

(i) remove all piles, windrows, and any other compost material on the composting facility's property;

(ii) remove or revegetate compacted compost material that may be left on the land;

(iii) drain ponds or leachate collection system if any, back-fill, and assure removed contents are properly disposed;

(iv) cover if necessary; and

(v) record with the county recorder as part of the record of title, a plat and statement of fact that the property has been used as a composting facility.

(b) The post-closure care and monitoring shall be for five years and shall consist of:

(i) the maintenance of any monitoring equipment and sampling and testing schedules as required by the Executive Secretary; and

(ii) inspection and maintenance of any cover material.

R315-312-4. Requirements for Use on Land of Sewage Sludge, Woodwaste, and Other Organic Sludge.

(1) Any facility using domestic sewage sludge or septage on land is exempt from the requirements of Section R315-312-4 when the facility has a permit or other approval under the applicable requirements of Rule R317-8 and 40 CFR 503 issued by the Utah Division of Water Quality.

(2) Any facility using organic sludge, other than domestic sewage sludge or septage, or untreated woodwaste on land shall comply with the recycling standards of Section R315-312-2.

(3) Only agricultural or silvicultural sites where organic sludge or untreated woodwaste is demonstrated to have soil conditioning or fertilizer value shall be acceptable for use under this subsection, provided that the sludge or woodwaste is applied as a soil conditioner or fertilizer in accordance with accepted agricultural and silvicultural practice.

(4) A facility using organic sludge or untreated woodwaste on the land in a manner not consistent with the requirements of Section R315-312-4 must meet the standards of Rule R315-307.

KEY: solid waste management, waste disposal
February 1, 2007 19-6-105
Notice of Continuation February 14, 2008 19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-313. Transfer Stations and Drop Box Facilities.
R315-313-1. Applicability.

Any transfer station or drop box facility receiving solid waste from off-site shall meet the requirements of Rule R315-313.

R315-313-2. Transfer Station Standards.

(1) Each transfer station shall meet the requirements of Subsection R315-302-1(2)(f).

(2) Each transfer station shall meet the requirements of Section R315-302-2 and shall submit a plan of operation and such other information as requested by the Executive Secretary for approval prior to construction and operation.

(3) Each transfer station shall submit, to the Executive Secretary, by March 1 of each year, a report that meets the applicable requirements of Subsection R315-302-2(4) and a certification that the facility has, during the past year, operated according to the submitted plan of operation.

(4) Each transfer station shall be designed, constructed, and operated to:

(a) be surrounded by a fence, trees, shrubbery, or natural features so as to control access and to screen the station from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building;

(b) be sturdy and constructed of easily cleanable materials;

(c) be free of potential rat harborage, and provide effective means to control rodents, insects, birds, and other vermin;

(d) be adequately screened to prevent blowing of litter and to provide effective means to control litter;

(e) provide protection of the tipping floor from wind, rain, or snow;

(f) have an adequate buffer zone around the active area to minimize noise and dust nuisances, and a buffer zone of 50 feet from the active area to the nearest property line in areas zoned residential;

(g) provide pollution control measures to protect surface and ground waters by the construction of:

(i) a run-off collection and treatment system, if required, must be designed and operated to collect and treat a 25-year storm and equipment cleaning and washdown water; and

(ii) a run-on prevention system to divert a 25-year storm event;

(h) provide all-weather access in all vehicular areas;

(i) provide pollution control measures to protect air quality including a prohibition against all burning and the development of odor and dust control plans to be made part of the plan of operation;

(j) prohibit scavenging;

(k) provide attendants on-site during hours of operation;

(l) have a sign that identifies the facility and shows at least the name of the site, hours during which the site is open for public use, materials not accepted at the facility, and other necessary information posted at the site entrance;

(m) prevent the acceptance of prohibited waste by meeting the requirements of Subsection R315-303-4(7);

(n) have communication capabilities, if available in the facility area, to immediately summon fire, police, or emergency service personnel in the event of an emergency; and

(o) remove all wastes at final closure from the facility to another permitted facility.

R315-313-3. Drop Box Facility Standards.

(1) Each drop box facility shall be constructed of durable watertight materials with a lid or screen on top that prevents both the loss of materials during transport and access by rats and other vermin.

(2) Each drop box facility shall be located in an easily identifiable place accessible by all-weather roads.

(3) Each drop box facility shall be designed and serviced as often as necessary to ensure adequate storage capacity at all times. Storage of solid waste outside the drop boxes is prohibited.

(4) Each drop box facility shall have a sign at the entrance that complies with Subsection R315-313-2(2)(l).

(5) The owner or operator of each drop box facility shall remove all remaining wastes at final closure, to a permitted facility and remove the drop box.

KEY: solid waste management
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-314. Facility Standards for Piles Used for Storage and Treatment.
R315-314-1. Applicability.

(1) The requirements of Rule R315-314 apply to the following:

(a) a pile of solid waste containing garbage that has been in place for more than seven days;

(b) a pile of solid waste which does not contain garbage that has been in place for more than 90 days;

(c) a pile of material derived from waste tires where more than 1,000 passenger tire equivalents are stored at one site; and

(d) a pile of whole waste tires where more than 1,000 tires are stored at one site.

(2) The requirements of Rule R315-314 do not apply to the following:

(a) solid waste stored or treated in piles prior to recycling including compost piles and wood waste;

(b) solid waste stored in fully enclosed buildings, provided that no liquids or sludge containing free liquids are added to the waste;

(c) a pile of inert waste, as defined by Subsection R315-301-2(36); and

(d) a pile of whole waste tires located at a permitted waste disposal facility that is stored for not longer than one year.

(3) A site where crumb rubber, an ultimate product derived from waste tires, or waste tires that have been reduced to materials for beneficial use are stored for not longer than one year may receive a waiver of the requirements of Rule R315-314 from the Executive Secretary on a site specific basis.

(a) No waiver of the requirements of Rule R315-314 will be granted by the Executive Secretary without application from the owner or operator of the storage site.

(b) In granting a waiver of the requirements of Rule R315-314, the Executive Secretary may place conditions on the owner or operator of the storage site as to the sizes of piles, distance between piles, or other operational practices that will minimize fire danger or a risk to human health or the environment.

(c) The Executive Secretary may revoke a waiver of the Requirements of Rule R315-314 if the Executive Secretary finds that:

(i) any condition of the waiver is not met; or

(ii) the operation of the storage site presents a fire danger or a threat to human health or the environment.

R315-314-2. General Requirements.

(1) Each owner and operator shall:

(a) comply with the applicable requirements of Section R315-302-2; and

(b) remove all solid waste from the pile at closure to another permitted facility.

(2) Requirements for Solid Waste Likely to Produce Leachate.

(a) Waste piles shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by pile handling vehicles and the pile itself.

(b) A run-off collection and treatment system shall be designed, installed and maintained to collect and treat a 25-year storm event.

(c) Waste piles having a capacity of greater than 10,000 cubic yards shall have either:

(i) a ground water monitoring system that complies with Rule R315-308; or

(ii) a leachate detection, collection and treatment system.

(iii) For purposes of this subsection, capacity refers to the total capacity of all leachate-generating piles at one facility, e.g., two, 5,000 cubic yard piles will subject the facility to the requirements of this subsection.

(d) A run-on prevention system shall be designed and maintained to divert the maximum flow from a 25-year storm event.

(e) The Executive Secretary may require that the entire base or liner shall be inspected for wear and integrity and repaired or replaced by removing stored wastes or otherwise providing inspection access to the base or liner; the request shall be in writing and cite the reasons including valid ground water monitoring or leachate detection data leading to request such an inspection, repair or replacement.

(3) The length of time that solid waste may be stored in piles shall not exceed 1 year unless the Executive Secretary determines that the solid waste may be stored in piles for a longer time period without becoming a threat to human health or the environment.

(4) The Executive Secretary or an authorized representative may enter and inspect a site where waste is stored in piles as specified in Subsection R315-302-2(5)(b).

R315-314-3. Requirements for a Waste Tire Storage Facility.

(1) The definitions of Section R315-320-2 are applicable to the requirements for a waste tire storage facility.

(2) No waste tire storage facility may be established, maintained, or expanded until the owner or operator of the waste tire storage facility has obtained a permit from the Executive Secretary. The owner or operator of the waste tire storage facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) The owner or operator of a waste tire storage facility shall:

(a) submit the following for approval by the Executive Secretary:

(i) the information required in Subsections R315-310-8;

(ii) a plan of operation as required by Subsection R315-302-2(2);

(iii) a plot plan of the storage site showing:

(A) the arrangement and size of the tire piles on the site;

(B) the width of the fire lanes and the type and location of the fire control equipment; and

(C) the location of any on-site buildings and the type of fencing to surround the site;

(iv) a financial assurance plan including the date that the financial assurance mechanism becomes effective; and

(v) a vector control plan;

(b) accumulate tires only in designated areas;

(c) control access to the storage site by fencing;

(d) limit individual tire piles to a maximum of 5,000 square feet of continuous area in size at the base of the pile;

(e) limit the individual tire piles to 50,000 cubic feet in volume or 10 feet in height;

(f) insure that piles be at least 10 feet from any property line or any building and not exceed 6 feet in height when within 20 feet of any property line or building;

(g) provide for a 40 foot fire lane between tire piles that contains no flammable or combustible material or vegetation;

(h) effect a vector control program, if necessary, to minimize mosquito breeding and the harborage of other vectors such as rats or other animals;

(i) provide on-site fire control equipment that is maintained in good working order;

(j) display an emergency procedures plan and inspection approval by the local fire department and require all employees to be familiar with the plan;

(k) establish financial assurance for clean-up and closure of the site:

(i) in the amount of $150 per ton of tires stored at the site; and

(ii) in the form of a trust fund, letter of credit, or other mechanism as approved by the Executive Secretary;

(l) maintain a record of the number of:

(i) tires received at the site;

(ii) tires shipped from the site

(iii) piles of tires at the site; and

(iv) tires in each pile; and

(m) meet the applicable reporting requirements of Subsection R315-302-2(4).

(4) Whole Tires Stored in a Tire Fence.

(a) Whole Tires stored in a tire fence are exempt from Subsections R315-314-3(3)(e), (f), and (g) but must:

(i) obtain a permit from the Executive Secretary as required by Subsection R315-314-3(2);

(ii) receive approval for establishing, maintaining, or expanding the tire fence from the local government and the local fire department and submit documentation of these approvals to the Executive Secretary; and

(iii) maintain the fence no more than one tire wide and eight feet high.

(b) An owner of a tire fence may receive a waiver from the requirements of Subsection R315-314-3(4)(a)(i) if the Executive Secretary receives written notice from the owner of the tire fence on or before November 15, 1999 that documents and certifies that:

(i) the tire fence was in existence prior to October 15, 1999; and

(ii) no tires have been added to the fence after October 14, 1999.

(5) Each tire recycler, as defined by Subsection 19-6-803(19), that stores tires in piles prior to recycling shall comply with the following requirements:

(a) if the tire recycler documents that the waste tires are stored for five or fewer days, the tire recycler shall:

(i) meet the requirements of Subsections R315-314-3(3)(b) through (g); or

(ii) obtain a waiver from the requirements of Subsections R315-314-3(3)(b) through (g) from the local fire department; or

(b) if the tire recycler does not document that the waste tires are stored for five or fewer days, the tire recycler shall be considered a waste tire storage facility and shall:

(i) meet the requirements of Subsections R315-314-3(2) and (3); and

(ii) the amount of financial assurance required by Subsection R315-314-3(3)(l) shall be $150 per ton of tires held as the average inventory during the preceding year of operation.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The following wastes are prohibited from disposal at a solid waste disposal facility.

(a) Lead acid batteries must be recycled and otherwise managed in accordance with Sections 19-6-601 through 607.

(b) Used oil must be recycled and otherwise managed in accordance with Rule R315-15.

R315-315-2. Asbestos Waste.

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154, 2006 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

(1) Dead animals shall be managed and disposed in a manner that minimizes odors and the attraction, harborage, or propagation of insects, rodents, birds, or other animals.

(2) Dead animals may be disposed at the active working face of a permitted landfill or in a separate trench specifically prepared to receive dead animals.

(a) If dead animals are disposed at the active working face of a permitted landfill, the carcasses shall be placed at or near the bottom of the cell and immediately covered with a minimum of two feet of other waste.

(b) If dead animals are disposed in a separate trench, the carcasses shall be completely covered with a minimum of six inches of earth at the end of the working day the carcasses are received.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following waste containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; energy recovery facility; or a facility permitted by rule under Rule R315-318:

(a) waste containing PCBs at concentrations less than 50 ppm as found in situ at the original remediation site as specified by 40 CFR 761.61 (2001);

(b) PCB household waste as defined by 40 CFR 761.3 (2001); and

(c) small quantities, 10 or fewer, of intact, non-leaking small PCB capacitors from fluorescent lights.

(3) Waste containing PCBs at concentrations of 50 ppm, or higher, are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320 except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:

(i) a facility that began receiving waste prior to July 15, 1993, that is permitted under 40 CFR 761.70, .75 or .77 (2001) to accept waste containing PCBs; or

(ii) a facility that began receiving waste after July 15, 1993, that is permitted under 40 CFR 761.70, .71, .72, .75, or .77 (2001) to accept waste containing PCBs, which facility must also receive approval under Rules R315-301 through 320; or

(b) when approved by the Executive Secretary, the following wastes may be disposed at an approved unit of a permitted landfill or may be disposed at an incinerator that meets the requirements of Subsection R315-315-7(3)(a)(i) or (ii):

(i) PCB bulk products regulated by 40 CFR 761.62(b) (2001);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3 (2001);

(iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3 (2001);

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A) (2001);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii) (2001); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2) (2001).

(c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:

(i) shall modify the approved Ground Water Monitoring Plan to include the testing of the ground water samples for PCB containing constituents at appropriate detection levels; and

(ii) may be required to test the leachate generated at the unit of the landfill under 40 CFR 761.62(b)(2).

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. In addition, for the purpose of Section R315-315-8, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

(a) Class I Landfill;

(b) Class II Landfill;

(c) Class III Landfill; or

(d) Class V Landfill.

(3) Petroleum contaminated soils containing the following constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV or VI Landfill:

(a) Benzene, 0.03 mg/kg;

(b) Ethylbenzene, 13 mg/kg;

(c) Toluene, 12 mg/kg; and

(d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

KEY: solid waste management, waste disposal
October 15, 2003 19-6-105
Notice of Continuation February 14, 2008

R315. Environmental Quality, Solid and Hazardous Waste.
R315-316. Infectious Waste Requirements.
R315-316-1. Applicability.

(1) The standards of Rule R315-316 apply to:

(a) any health facility as defined by Subsection 19-6-102(10) that generates more than 200 pounds, per month, of infectious waste as defined by Subsection 19-6-102(12);

(b) any transporter that collects and transports more than 200 pounds of infectious waste in any one load; and

(c) a storage, treatment, or disposal facility.

(2) The standards of Rule R315-316 do not apply to a health facility that generates 200 pounds, or less, of infectious waste per month.

R315-316-2. General Operational Requirements.

(1) Every facility that generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

(a) type and estimated quantity of waste generated or handled;

(b) segregation, packaging, and labeling procedures;

(c) collection, storage, and transportation procedures, including the name of the transporter, to be implemented;

(d) treatment or disposal methods that will be used, and disposal facility that will be used; and

(e) person responsible for the management of the infectious waste.

(2) All infectious waste generators and handlers shall report any delivery of unauthorized waste to the local health department immediately upon recognition.

(3) Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment.

R315-316-3. Storage and Containment Requirements.

(1) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects or rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste during storage.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage, handling, or transport.

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All containers used for containment of any infectious waste shall be red or orange, or if containers are not red or orange, shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the liner has not been damaged or punctured.

(8) Storage and containment areas shall: protect infectious waste from the elements; be ventilated to the outside; be only accessible to authorized persons; and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, it shall be stored at 40 degrees Fahrenheit (5 degrees Celsius), or below.

(10) Under no conditions may infectious waste be stored for longer than 30 days.

(11) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment or unless all of the waste is to be treated as infectious waste in accordance with this section.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

(a) be trained in the proper use of protective equipment;

(b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and

(c) have face shields and respirators available as deemed necessary by the transporter.

(d) Protective gear that becomes soiled shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Executive Secretary.

(4) Transport vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible but not to exceed 30 days after generation, and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) All material that has been rendered non-infectious through an approved treatment method may be handled as non-infectious waste, provided it is not otherwise a hazardous waste or radioactive waste excluded from disposal in a solid waste facility by Rule R315-316.

(b) Except for incineration and steam sterilization, no

treatment method may be used to render materials non-infectious without receiving prior approval from the Executive Secretary.

(3) Infectious waste may be incinerated in an incinerator.

(a) The incinerator shall comply with the requirements of Rule R315-306 and provide complete combustion of the waste to carbonized or mineralized ash.

(b) A composite sample of the ash and residues from the incinerator shall be taken at least once each year. The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 1991 ed., Toxic Characteristics Leaching Procedure (TCLP) on parameters determined by the Executive Secretary to determine if it is a hazardous waste. If hazardous, it shall be managed by applicable state regulations.

(4) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available and shall certify in writing that he understands written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate Bacillus stearothermophilus spores in the center of the waste load at a 6 Log_{10} reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day, date, and operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis when the Executive Secretary finds the proposed alternative treatment method renders the material non-infectious.

(b) The determination shall be based on the results of laboratory tests, submitted by the person proposing the use of the treatment method, meeting the following requirements:

(i) the laboratory tests shall be conducted:

(A) by qualified laboratory personnel;

(B) using recognized microbial techniques;

(C) on samples that have been inoculated with the test organisms, then subjected to the proposed treatment method and processed the same way as will be used in the treatment process if approved; and

(ii) the results of the tests must document that the proposed treatment method inactivates:

(A) vegetative bacteria - Staphylococcus aureus (ATCC 6538) or Pseudomonas aeruginosa (ATCC 15442) at a 6 Log_{10} reduction or greater (a 99.9999% reduction or greater of the organism population);

(B) fungi - Candida albicans (ATCC 18804), Penicillium chrysogenum (ATCC 24791), or Aspergillus niger at a 6 Log_{10} reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage (ATCC15597-B1) at a 6 Log_{10} reduction or greater;

(D) parasites - Cryptosporidium spp. oocysts or Giardia spp. cysts at a 6 Log_{10} reduction or greater;

(E) mycobacteria - Mycobacterium terrae, Mycobacterium phlei, or Mycobacterium bovis (BCG) (ATCC 35743) at a 6 Log_{10} reduction or greater; and

(B) Bacterial spores - Bacillus stearothermophilus spores (ATCC 7953) or Bacillus subtilis spores (ATCC 19659) at a 4 Log_{10} reduction or greater (a 99.99% reduction or greater of the organism population).

(iii) The Executive Secretary shall review the submitted materials and reply in writing within 30 days of the receipt of the submittal.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers at the bottom of the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-105**
Notice of Continuation February 14, 2008

R315. Environmental Quality, Solid and Hazardous Waste.
R315-317. Other Processes, Variances, Violations, and Petition for Rule Change.
R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Executive Secretary upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted in accordance with Section R315-2-13.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Executive Secretary or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Executive Secretary may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Executive Secretary may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is served, the person specified therein files a written request, containing the information specified in Subsection 63-46b-3(3), for agency action before the Board as provided in Section R315-12-3. Title 63, Chapter 46b and Rule R315-12 shall govern the conduct of hearings before the Board.

R315-317-4. Petition for Rule Change.

(1) The requirements of Section R315-317-4 shall apply to a petition for:

(a) making a new rule;

(b) amending, repealing, or repealing and reenacting and existing rule;

(c) amending a proposed rule;

(d) allowing a proposed rule or change in proposed rule to lapse; or

(e) any combination of the above.

(2) Petition Procedure and Form.

(a) The petition shall be addressed and delivered to the Executive Secretary.

(b) The petition shall follow the requirements of Sections R15-2-3 through 5.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-105**
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-318. Permit by Rule.
R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste, including an incinerator, may be permitted by rule upon application to the Executive Secretary if the Executive Secretary determines the facility is regulated by Federal or state agencies which have regulations or rules as stringent as, or more stringent than, Rules R315-301 through R315-320.

(2) No permit by rule may be granted to a facility that began receiving waste after July 15, 1993 without application to the Executive Secretary.

(3) Any facility permitted by rule is not required to obtain a permit as required by Subsection R315-301-5(1) and Subsection R315-310-1(1) but may be required to follow operational practices, as determined by the Executive Secretary, to minimize risk to human health or the environment.

(4) In no case may a facility operating under a permit by rule approved by the Executive Secretary conduct disposal operations that are in violation of the Utah Solid and Hazardous Waste Act or Rules R315-301 through R315-320.

R315-318-2. Facilities Permitted by Rule.

(1) The following facilities that began receiving waste prior to July 15, 1993 are permitted by rule:

(a) solid waste disposal and incineration facilities which are required to operate under the conditions of a state or Federal hazardous waste permit or plan approval;

(b) disposal operations or activities which are required to operate under the conditions of a Utah Division of Oil, Gas, and Mining permit or plan approval;

(c) non-commercial underground injection facilities regulated by the Utah Division of Water Quality; and

(d) disposal operations or activities which accept only radioactive waste and are required to operate under the conditions of a Utah Division of Radiation Control permit or plan approval.

(2) An underground storage tank, as defined by 40 CFR 280.12 and Subsection R311-200-1(43), that by meeting the requirements specified in 40 CFR 280.71(b) and Section R311-204-3, is closed in place, may be permitted by rule after meeting the following conditions:

(a) the owner of the underground storage tank shall notify the Executive Secretary of the in place closure; and

(b) the owner of the underground storage tank shall provide documentation to the Executive Secretary that the requirements of Subsection R315-302-2(6) have been met.

KEY: solid waste management, waste disposal
February 1, 2007 **19-6-104**
Notice of Continuation February 14, 2008 **19-6-105**
19-6-108

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.13 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorptions system.

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 13 per 100 ml nor shall the geometric mean exceed 16 per 100 ml during any 7-day period.

D. The effluent pH values shall be maintained within the limits of 6.5 to 9.0.

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.

1.27 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.28 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.29 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.30 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by

wastes is not included.

1.31 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

1.32 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet of less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards), except that the Board may waive compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500

per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Bear River -- December 23, 1997
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 1, 2000
7.7 East Canyon Reservoir -- September 1, 2000
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003

7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007
7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

KEY: water pollution, waste disposal, industrial waste, effluent standards
February 4, 2008 19-5
Notice of Continuation October 2, 2007

R317. Environmental Quality, Water Quality.
R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems.
R317-3-1. Technical and Procedural Requirements.

1.1. Scope of This Rule

A. General. This rule is intended to aid the logical development, from feasibility study to startup, of a wastewater collection, treatment and disposal project.

B. Authority. Construction permits and approvals are issued pursuant to the provisions of Sections 19-5-107 and 19-5-108. Violation of construction permit or approval including compliance with the conditions thereof, or beginning of construction, or modification without the executive secretary's approval, is subject to the penalties provided in Section 19-5-115.

C. Applicability

1. This rule applies to:

a. communities, sewerage agencies, industries, and federal or state agencies (hereinafter referred to as the applicant), and

b. i. construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto, or

ii. construction, installation, modification or operation of any establishment or any extension or modification or addition to it, the operation of which would probably result in a discharge.

2. The applicant must not advertise the project for bids and must not begin construction without receiving a construction permit.

D. Requirements

1. The design requirements in this rule are for collection, treatment and disposal of wastewater largely originating from domestic sources. These criteria are intended to be limiting values for items upon which an evaluation of such plans and specifications will be made and to establish, as far as practicable, uniformity of practice. This rule also provides for a mechanism to apply water pollution control research and recommendations for further evaluation by the design engineer.

2. Communities, and the engineering profession should discuss with the staff of the executive secretary possible combinations of wastewater treatment and disposal processes or situations not covered in detail by this rule.

E. Construction Permit and Approvals

1. When a Permit or an Approval is Issued. A construction permit or an approval is issued when the applicant has met all requirements of this rule, including any additional requirements of funding programs administered by the executive secretary. The applicant or the designee or the consultant should meet with the staff of the executive secretary to discuss the plan of study before undertaking extensive engineering studies for construction of treatment works. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

2. Variance. The executive secretary may grant a variance from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice. The applicant must submit pertinent and relevant material in support of a variance from the minimum requirements.

3. Limitations

a. The issuance of a construction permit does not relieve in any way the applicant of the obligation to obtain other approvals and permits, i.e., ground water discharge permit, clearances etc., from other agencies which may have jurisdiction over the project.

b. The permit will expire at the end of one year from the date of issuance if the approved project is not under substantial construction. Plans and specifications must be resubmitted for review and reissuance of the expired permit.

F. Definitions

1. The annual average daily rate of flow is defined as:

a. an average of daily rates of flow over a period of not less than one year; or

b. the rate of flow equal to or greater than 50 percent of the daily flow rate data.

2. The average design rate of flow or the average peak-monthly rate of flow is defined as:

a. a moving average of daily rates of flow over a thirty consecutive days; or over a period of month whichever produces a higher rate of flow; or

b. the rate of flow equal to or greater than 92 percent of the daily flow rate data.

3. The maximum design rate of flow or peak-daily rate of flow is defined as:

a. the maximum rates of flow over a 24 hour period; or

b. the rate of flow equal to or greater than 99.7 percent of the daily flow data.

4. The peak design rate of flow or peak-hourly rate of flow is defined as:

a. the maximum rate of flow over a 60-minute period; or

b. the rate of flow equal to or greater than 99.9 percent of the daily flow data.

5. The minimum daily rate of flow is defined as the minimum rate of flow over a twenty-four hour period.

6. Industrial waste flow is defined as the maximum rate of flow for each of industries tributary to the sewer system.

7. Other Definitions. Other definition of terms and their use in this rule is intended to be in accordance with:

a. R317-1 (Definitions and General Requirements), and

b. Glossary - Water and Wastewater Control Engineering, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

8. Units of Expression The units of expression used are in accordance with those recommended in WPCF Manual of Practice Number 6, Units of Expression for Wastewater Treatment.

9. Terms

a. The term shall is used where practice is standardized to permit specific delineation of requirements or where safeguarding of the public health or protection of water quality justifies such definite action.

b. Other terms, such as should, recommended, preferred, indicate desirable procedures or methods, with deviations subject to individual consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice.

c. Desirable procedures or methods may be mandatory requirements for projects using state or federal funds.

1.2. Engineering Report

A. The Scope of the Report

1. The applicant or the applicant's consulting engineer should submit an engineering report to the executive secretary at least 60 days before the date when action by the executive secretary is desired. The report shall be prepared under the direction of a registered professional engineer licensed to practice in the State of Utah. The report must establish the need, scope, basis and viability for:

a. all projects involving innovative treatment and disposal processes, and

b. collection and pumping systems handling flows in excess of 1 million gallons per day (3,785 cubic meters per day).

2. The documents submitted for formal approval should

include all pertinent and relevant material to aid in the review of the submitted reports.

B. What is Required in the Report

1. The magnitude and complexity of the project will determine the scope of the report.

2. The report must provide basic information; criteria and assumptions; evaluation of alternate projects, with preliminary layouts and cost estimates; assessment of environmental factors; financing methods, anticipated charges for users; organizational and staffing requirements; conclusions or recommendations with a proposed project for consideration; and an outline of official actions and procedures required to implement the project.

3. The report should detail various concepts (including process description and sizing), factual data, and controlling assumptions and considerations for the functional planning of sewerage facilities. These data form the continuing technical basis for the detailed design and preparation of construction plans and specifications.

4. The report should include preliminary architectural, structural, mechanical, and electrical designs, sketches and outline specifications of process units, special equipment, etc.

5. The applicant or the consultant must address specific program and funding requirements in the report.

6. A detailed topical outline is available from the division.

C. Supplemental Requirements for Lagoons and Land Application. The engineer's report shall contain pertinent information on location, geology, hydrology, hydrogeology, soil conditions, area for expansion and any other factors that will affect the feasibility and acceptability of the proposed lagoon and land application projects.

1. Project Location. The engineer's report shall include on a 7.5-minute US Geological Survey topographic map showing the following within two mile (3.22 kilometers) radius of the proposed project site:

a. the location and direction of all residences, commercial developments, parks, recreational areas, land requirements for future additional treatment units and increased waste loadings, and land use zoning of area;

b. elevations and contours of the site and adjacent area;

c. watercourses and water supplies (including a log of each well, unless waived by the executive secretary);

d. location, depth, and discharge point of any field tile in the immediate area of the proposed site;

e. buffer zones;

f. limits of all flood plains, public drinking water supply watersheds and inland wetlands; and

g. natural site drainage zones.

2. Soil Borings and Geology. The applicant must determine representative subsurface soil characteristics and geology of the project site using a number of soil borings logged by an independent soil testing laboratory. At least one boring shall be a minimum of 25 feet (7.6 meters) in depth or into bedrock, whichever is shallower. The borings shall be filled and sealed. The report must address the following items as a minimum:

a. depth, type and texture of soil, all confirmed field data by the Soil Conservation Service (US Department of Agriculture);

b. hydraulic conductivity of the project site or the lagoon bottom as determined in the field, and lagoon bottom materials;

c. soil chemical properties such as, pH, nutrient levels, cation exchange capacity, etc.;

d. depth to bedrock;

e. bedrock type;

f. geologic discontinuities - faults, fractures, sinkholes;

g. jointing and permeability of rock.

3. Ground Water Issues

a. ground water depth confirmed by field investigations, for various seasons, including data from the period between March and May;

b. location of perched water tables;

c. ground water contours;

d. direction of ground water movement and flow;

e. ground water points of discharge;

f. available analyses of site ground water quality and drinking water wells in the vicinity, including but not limited to: coliform bacteria, pH, nitrates, total nitrogen, chlorides, sulfates, and total hardness;

g. a description of the depth and type of all water supply wells within two-mile (3.22 kilometers) radius of the proposed project site;

h. ground water monitoring needs using a system of wells or lysimeters around the perimeter of the project site; and

i. compliance with the requirements of R317-6 (Ground Water Quality Protection Rules) including securing a ground water discharge permit.

4. Climate Data

a. total precipitation for each month;

b. mean number of days per year with temperatures less than or equal to 32 degrees Fahrenheit (0 degree Centigrade);

c. wind velocities and direction;

d. evapotranspiration data.

D. Reports on Supplementary Investigations. Reports on soils, foundation, geological and hydrogeological investigations must be submitted by the applicant or the consultant, to the executive secretary. These reports are supplementary to a proposal, predesign or design report, plans and specifications for all projects. The reports must focus on any existing site conditions which may affect feasibility or constructibility of the project. If such problems do exist, mitigative and remedial measures thereto must be recommended by the applicant's consultant. The basis of conclusions reached should be supported with relevant and detailed information, graphically and narratively. The recommendations must be incorporated in the design.

1.3. Predesign Report

A. A predesign report must be prepared for the projects designed to:

1. treat domestic sewage flow in excess of 5 million gallons per day (18,900 cubic meters per day); or

2. incorporate emerging, innovative and alternative technologies.

B. The report must be submitted for review and approval by the division. The report shall include a summary of process design criteria, the basis of design, process and hydraulic profiles, outline of all appurtenant facilities, and supporting information.

C. Approval of a predesign report represents an agreement-in-principle subject to receipt, review and approval of satisfactory engineering plans and specifications. Such agreement-in-principle will be modified or revised in light of new information that may become available later. Also, an approval of prefinal documents is not an authorization to advertise the project for bids or to begin construction; but allows the applicant to proceed with preparing final engineering drawings and specifications.

1.4. Construction Plans

A. General. A complete set of construction drawings covering all disciplines shall be submitted for review in fulfillment of the requirements of this rule. The size, complexity and nature of the project will determine the extent of involvement of various disciplines. Such disciplines are, but not necessarily limited to, Civil, Structural, Mechanical, Architectural, Mechanical, Electrical, Geotechnical, Instrumentation, Heating, Ventilating and Air Conditioning etc. All designs shall be in accordance with the requirements of applicable local, state and federal rules or regulations, the latest recognized practice standards including the Uniform Building

Code, the National Electrical Code, the Uniform Mechanical Code, the Uniform Plumbing Code and other industry standards. The plans shall be clear, legible and suitable for microfilming or image processing.

1. Standard Information

a. Plans shall show a suitable project title, the name of municipality, sewer district, sewerage agency, sponsoring institution or industry, current revision date, and the name of engineer in charge of the project, engineer's registration number, an imprint of registration seal and signature.

b. Plans shall be drawn to a scale which will permit all necessary information to be plainly shown. Numerical and graphical scales in foot-pound-second (FPS or English) system shall be shown. The use of the international system (metric or MKS or meter-kilogram-second) of units is encouraged.

c. All plan views shall indicate a north point, preferably in a standardized direction. A suitable geographical reference for the project shall also be shown. Topographical and elevation data should be presented on a recognized standard datum. Such datum should be clearly indicated.

2. Vicinity and Location Plans. A large scale vicinity map should be provided for a suitable geographical reference to the project. It should also indicate vehicular access to the project.

3. General Site Work Plans.

a. A site plan showing the project lay out should be included to establish a reference to the existing features. Similarly, a reduced-scale site or key plan should be drawn on all drawings to provide the context of work shown on the drawing to the site.

b. For the entire project site, information shall be provided on topography, survey data, location of test borings, limits of work, staging area for contractors, areas of project related site work, and other work that may overlap the areas of concentrated work activities. Information shall be compiled to the extent practicable on utility locations, above and below ground utilities which might interfere with the proposed construction, particularly water mains, gas mains, storm drains, and telephone and power conduits, outside piping, all known existing structures, security improvements, roads, signage, lighting, and other site improvements. Compiled information should be shown on plans.

4. Detailed Plans. Construction to be performed in areas of concentrated work such as individual installations, buildings, rooms or assemblies shall be shown on the detailed plans. Such plans shall show plan views, elevations, sections and supplementary views which, together with the specifications and general layouts, provide the working information for the contract and construction of the works. They shall also include detailed design data in all applicable disciplines, dimensions and relative elevations of structures, the location and outline form of equipment, location size of piping, water levels, water surface and hydraulic profiles, and ground elevations.

B. Plans for Sewers. Construction plans are required to be submitted for projects involving new sewer systems. Projects for substantial additions to the existing systems are required to be submitted only in fulfillment of the requirements of the funding agency. These plans must detail the following information:

1. Geographical Features

a. Topography and elevations. Existing or proposed improvements, streets, the boundaries of all streams and water impoundments, and water surfaces shall be clearly shown. Contour lines at suitable intervals should be included.

b. Streams. The direction of flow in all natural or artificial streams, and high and low water elevations of all water surfaces at sewer outlets shall be shown.

2. Boundaries. The boundary lines of the municipality or the sewer district, and the area to be sewered, shall be shown.

3. Sewers. The plan shall show the location, size and direction of flow of all existing and proposed sanitary sewers draining to the treatment works concerned.

4. Plans and Profiles. Detailed plans and profiles shall be submitted. Profiles should have a horizontal scale of not more than 100 feet to the inch and vertical scale of not more than 10 feet to the inch. Plan views should be drawn to a corresponding horizontal scale and preferably be shown on the same sheet. Plans and profiles shall show:

a. Location of streets and sewers;

b. ground surface; size of pipe; length between manholes; manhole identifiers, such as numbers etc.; invert and surface elevation at each manhole; and grade of sewer between each two adjacent manholes;

c. the elevation and location of the basement floor on the profile of the sewer, showing feasibility to serve adjacent basements except where otherwise noted on the plans; and

d. Locations of all special features such as inverted siphons, concrete encasements, elevated sewers, special construction to implement proper separation from water mains etc.

5. Detailed drawings, made to a scale to clearly show the nature of the design, shall be furnished to show the following particulars:

a. all stream crossings and sewer outlets, with elevations of the stream bed and of normal and extreme high and low water levels;

b. details of all special sewer joints, pipeline construction or installation, and cross-sections; and

c. details of all sewer appurtenances such as manholes, inspection chambers, inverted siphons, regulators, flow measurement or control stations and elevated sewers.

C. Plans for Pumping Stations. Construction plans shall be submitted for construction or modifications of pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day). These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Vicinity, Site and General Site Work Plans

a. the location and extent of the tributary area;

b. any municipal boundaries within the tributary area;

c. the location of the pumping station and force main, and pertinent elevations; and

d. availability of power sources, including alternative sources.

2. Detailed Plans. Detailed plans shall be submitted showing the following:

a. topography of the site with all pertinent elevations;

b. soils or foundation report;

c. existing pumping station with all adjacent improvements;

d. proposed pumping station, including provisions for installation of future pumps or ejectors, emergency power generation, and other reliability features;

e. maximum hydraulic gradient including calculations in downstream gravity sewers when all installed pumps are in operation; and

f. elevation of high water at the site, and maximum elevation of sewage in the collection system upon occasion of power failure.

D. Plans for Treatment Plants. Construction plans shall be submitted for construction or modifications of treatment plants. These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Location Plan. A plan shall be submitted showing the treatment plant in relation to the remainder of the system.

2. General Layout. Layouts of the proposed treatment plant shall be submitted, showing:

a. topography of the site;

b. size and location of plant structures, and adjacent

improvements;

c. schematic flow diagram(s), including mass balance, showing the flow through various plant units, and showing utility systems serving the plant processes;

d. outside or yard piping, including any arrangements for bypassing individual units (Materials handled and direction of flow through pipes shall be shown.); and

e. hydraulic profiles, including calculations, showing the flow of the major liquid or solid process streams including raw or treated sewage, supernatant liquor, scum and sludge.

3. Detailed Plans. Detailed plans shall show the following:

a. location, dimensions, and elevations of all existing and proposed plant facilities;

b. elevations of a 100-year water level of the body of water to which the plant effluent is to be discharged;

c. type, size, pertinent features, and operating capacity of all pumps, blowers, motors, and other mechanical devices;

d. schematics, sectional or isometric views of all process and utility piping not shown on the General Site Work Plans;

e. hydraulic profile at the minimum, average, and maximum rate of flow; and

f. description of any features not otherwise covered by other drawings or specifications or engineer's report.

1.5. Technical Specifications. Complete technical specifications for the construction of sewers, pumping stations, treatment plants, and all other appurtenances, shall accompany the plans. The specifications accompanying construction drawings shall include all construction information not shown on the drawings which is necessary to inform the builder in detail of the design requirements for the quality of materials, workmanship and fabrication of the project. They shall also include: the type, size strength, operating characteristics, and rating of equipment; allowable infiltration; the complete requirements for all mechanical and electrical equipment, including machinery, valves, piping, and jointing of pipe; electrical apparatus, wiring, instrumentation, and meters; laboratory fixtures and equipment; operating tools, construction materials; special filter materials, such as, stone, sand, gravel, or slag; miscellaneous appurtenances; chemicals when used; instructions for testing materials and equipment as necessary to meet design standards; and performance tests for the completed work and component units. Performance tests must be conducted at design load conditions wherever practical.

1.6. Revisions to the Approved Plans and Specifications. Any changes, such as addenda, change orders, field change etc., to the approved plans or specifications affecting capacity, flow, operation of units, or point or quality of discharge shall be submitted for review and approval before any such change is made in either contract documents or construction. Plans or specifications proposed to be so revised must, therefore, be submitted at least 30 days in advance of any construction work which will be affected by such changes to permit sufficient time for review and approval. Changes under emergency conditions may be communicated verbally, and then submitted in writing. Structural revisions or other minor changes not affecting capacities, flows, or operation are to be permitted during construction without approval.

1.7. Construction Supervision. The applicant must demonstrate that adequate and competent inspection will be provided during construction. It is the responsibility of the applicant to provide frequent and comprehensive inspection of the project.

1.8. Plan of Operation

A. Submittal. A plan of operation must be prepared at the mid-point of construction, but no later than at the time of 80 percent completion of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project.

B. Contents of the Plan. The plan of operation must provide a concise, sequential description of and implementation schedule for the following activities:

1. hiring and training of operators;
2. start-up schedules and services;
3. safety programs, plans and procedures;
4. emergency operations procedures and plan;
5. process monitoring program;
6. laboratory and testing services;
7. user charge and pretreatment program, necessary to assure cost-effective, efficient and reliable startup and operation of the facility, future expansion and upgrade; and
8. maintenance of water quality and public health.

1.9. Operation and Maintenance Manual

A. Submittal. A draft of the manual must be submitted at the mid-point of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project. Final draft must be submitted for review and approval, no later than at the 90 percent stage of construction in the final form or 30 days prior to startup, whichever occurs first.

B. Contents of the Manual

1. The manual presents procedures to facilitate operation and maintenance of the plant under all conditions, technical guidance for troubleshooting, and requirements for compliance with the permits and approvals issued. The manual must address the needs of the system being employed and must be directed toward the level of training required of the operating staff.

2. The manual must include all information pertinent for the facilities besides information from manufacturers' catalogs or brochures.

1.10. Start-up

A. Certificate of Completion. The engineer in charge of construction management or inspection of the approved project or facilities shall submit a certificate, bearing the seal of the professional engineer, to the effect that the facilities were constructed in accordance with approved plans, specifications, addenda and change orders to the owner with a copy thereof to the division.

B. Authorization to Operate. The applicant will request a final inspection the division upon receipt of the certificate of completion. No facilities may be placed in service before the final inspection by the division, and authorization to operate the facility is issued in writing by the executive secretary.

C. As-built or Record Drawings.

1. Within 30 days of acceptance by the owner of wastewater or industrial waste facilities from the contractor, a copy of such acceptance must be submitted to the division for record.

2. As-built or record drawings clearly showing the as-built project shall be submitted to the executive secretary within 120 days after the completion of the construction of the approved project or facilities.

1.11. Operation During Construction

A. Construction-related Bypass. Operation of all existing sewers, pump stations, and treatment plants must continue without interruption during the construction of new facilities or modification of existing facilities. Therefore, bypassing will not be allowed except under extenuating circumstances. If this is not possible and construction will result in the discharge of partially treated and untreated sewage into the surface waters of the state, an approval for such a discharge shall be required from the executive secretary before such discharge occurs.

B. Request for a Construction-related Bypass. A formal request for the consideration of a construction-related bypass shall be submitted to the executive secretary by the permittee not less than 90 days prior to the date of proposed bypass initiation. Such request shall contain at least the following

information:

1. a detailed description of the construction work to be performed which the owner has deemed warrants a bypass;

2. an analysis of all known alternatives which would eliminate or reduce the need for plant bypassing;

3. cost-benefit and effective analysis of alternatives, including an assessment of resource damages;

4. the minimum and maximum duration of bypassing under each alternative;

5. the applicant's preferred alternative for conducting the bypass;

6. the projected date of initiation of bypass.

C. Approval or Denial of a Construction-related Bypass

1. The request for a construction-related bypass will be approved or denied following a thorough review with due consideration of compliance with the discharge permit(s); water quality standards; and all known available and reasonable methods to abate water pollution.

2. An approval issued to permit bypass will contain all restrictions necessary to minimize the duration of bypassing. A denial determination will state the reasons for the denial and will direct the permittee to initiate a plan of action to implement an alternative to bypassing.

1.12. Innovative Processes Evaluation

A. Basic requirements. The executive secretary will consider the evaluation of innovative approaches to wastewater treatment in the interest of encouraging advances in technology, processes, equipment and material not covered by this rule, provided that:

1. a favorable recommendation has been made by a professional engineer licensed to practice in Utah, following his own evaluation of developmental processes or equipment or material, for a specific project;

2. the applicant has capital and technical resources to replace or modify developmental processes, equipment and material with conventional processes, equipment and material;

3. the risk incurred with the experimentation rests solely with the proponent of processes, equipment and material as evidenced by the written acknowledgement to the executive secretary; and

4. the applicant will replace the failed processes, equipment and material with a proven conventional processes, equipment and material as evidenced by the written acknowledgement to the executive secretary.

B. Approval Limitations

1. The executive secretary may approve developmental processes, equipment and material may be approved in the form of terms and conditions to a construction permit, when reliable operating data from full scale installations are not available. The term and conditions may include such as, but not necessarily limited to, demonstration period for a successful application, requirements to submit reports on the operation of the system during the experimental period.

2. The executive secretary may limit the number of approvals for the same developmental processes, equipment and material until reliable and valid operational experience is gained.

C. Evaluation Criteria. The evaluation of innovative processes will include the following factors:

1. anticipated performance of the system in full scale field conditions,

2. ability to consistently meet required effluent and water quality standards,

3. any evidence of equivalence to conventional technology,

4. the owner's ability to finance, and to operate and maintain the system with the level of expertise necessary, and

5. submission of process descriptions, schematics, reports, monitoring and performance data, costs, specific studies, bench scale test data and pilot plant test data, and any other information appropriate and necessary for the evaluation.

R317-3-2. Sewers.

2.1. General. Construction of a new sewer system project may not begin unless the applicant has submitted an engineering report detailing the design, and construction plans to the executive secretary for review and approval evidenced by a construction permit. The executive secretary will not normally review construction plans for extensions of the existing sewer systems to new areas or replacement of sanitary sewers in the existing sewer systems unless requested or required by state or federal funding programs. Rain water from roofs, streets, and other areas, and ground water from foundation drains must not be allowed to enter the sewer system through planning, design and construction quality assurance and control measures.

2.2. Basis of Design

A. Planning Period. Sewers should be designed for the estimated ultimate tributary population or the 50-year planning period, whichever requires a larger capacity. The executive secretary may approve the design for reduced capacities provided the capacity of the system can be readily increased when required. The maximum anticipated capacity required by institutions, industrial parks, etc. must be considered in the design.

B. Sewer Capacity. The required sewer capacity shall be determined on the basis of maximum hourly domestic sewage flow; additional maximum flow from industrial plants; inflow; ground water infiltration; potential for sulfide generation; topography of area; location of sewage treatment plant; depth of excavation; and pumping requirements.

1. Per Capita Flow. New sewer systems shall be designed on the basis of an annual average daily rate of flow of 100 gallons per capita per day (0.38 cubic meter per capita per day) unless there are data to indicate otherwise. The per capita rate of flow includes an allowance for infiltration/inflow. The per capita rate of flow may be higher than 100 gallons per day (0.38 cubic meter per day) if there is a probability of large amounts of infiltration/inflow entering the system.

2. Design Flow

a. Laterals and collector sewers shall be designed for 400 gallons per capita per day (1.51 cubic meters per capita per day).

b. Interceptors and outfall sewers shall be designed for 250 gallons per capita per day (0.95 cubic meter per capita per day), or rates of flow established from an approved infiltration/inflow study.

c. The executive secretary will consider other rates of flow for the design if such basis is justified on the basis of supporting documentation.

C. Design Calculations. Detailed computations, such as the basis of design and hydraulic calculations showing depth of flow, velocity, water surface profiles, and gradients shall be submitted with plans.

2.3. Design and Construction Details

A. Minimum Size

1. No gravity sewer shall be of less than eight inches (20 centimeters) in diameter.

2. A 6-inch (15 centimeters) diameter pipe may be permitted when the sewer is serving only one connection, or if the applicant justifies the need for such diameter on the basis of supporting documentation.

B. Depth. Sewers should be sufficiently deep to receive sewage from basements and to prevent freezing. Insulation shall be provided for sewers that cannot be placed at a depth sufficient to prevent freezing.

C. Odor and Sulfide Generation. The design shall incorporate features to control and mitigate odor and sulfide generation in sewers. Such features may include steeper slope to achieve higher velocity, reaeration through induced

turbulence, etc.

D. Slope

1. The pipe diameter and slope shall be selected to obtain velocities to minimize settling problems.

2. All sewers shall be designed and constructed to give mean velocities of not less than 2 feet per second (0.61 meter per second), when flowing full, based on Manning's formula using an n value of 0.013.

3. Sewers shall be laid with uniform slope between manholes.

4. Table R317-3-2.3(D)(4) shows the minimum slopes which shall be provided; however, slopes greater than these are desirable.

E. Flatter Slopes. Slopes flatter than those required for the 2-feet-per-second (0.61 meter per second)-velocity criterion when flowing full, may be permitted by the executive secretary provided that:

1. there is no other practical alternative;

2. the depth of flow is not less than 30 percent of the diameter at the average design rate of flow;

3. the design engineer has furnished with the report the computations showing velocity and depth of flow corresponding to the minimum, average and peak rates of flow for the present and design conditions in support of the request for variance; and

4. the operating authority of the sewer system submits a written acknowledgement of the ability to provide any additional sewer maintenance required by flatter slopes.

F. Steep Slopes

1. Where velocities greater than 15 feet per second (4.6 meters per second) are attained, special provision shall be made to protect against displacement by erosion and shock.

2. Sewers on 20 percent slopes or greater shall be anchored securely against lateral and axial displacement with suitable thrust blocks, concrete anchors or other equivalent restraints, spaced as follows:

a. Not over 36 feet (11 meters) center to center on grades 20 percent and up to 35 percent;

b. Not over 24 feet (7.3 meters) center to center on grades 35 percent and up to 50 percent;

c. Not over 16 feet (4.9 meters) center to center on grades 50 percent and over.

G. Alignment. Sewers 24 inches (61 centimeters) in diameter or less shall be laid with a straight alignment between manholes. The alignment shall be checked by either using a laser beam or lamping.

H. Changes in Pipe Size. When a smaller sewer joins a large one, the invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

I. Materials

1. The material of pipe selected should be suitable for local conditions. The material of sewer pipe should be compatible with factors such as industrial wastewater characteristics, putrecibility, physical and chemical properties of adjacent soil, heavy external loading, etc.

2. The material of pipe must withstand superimposed loads without any damage. The design of trench widths and depths should allow for loads. Special bedding, concrete cradle or encasement, or other special construction may be used to withstand extraordinary superimposed loading.

2.4. Curved Sewers. Curved sewers are permitted only under circumstances where conventional sewer construction is not feasible. A conceptual approval must be obtained before beginning the design.

A. Design

1. The minimum radius of curvature shall be greater than 200 feet or one-half of the maximum deflection angle for the material of pipe allowed by the manufacturer.

2. The design n value for the sewer pipe shall be 0.018.

3. Only one horizontal curve in the sewer alignment will be allowed between manholes. No vertical curves shall be permitted.

4. Manhole spacing shall not exceed 400 feet (122 meters).

5. Manholes must be provided at the beginning and the end of a curved alignment (i.e. change in radius of curvature).

6. The design should consider increased erosion potential due to high velocities.

B. Other Requirements

1. Maintenance equipment shall be available at all times for inspection and cleaning.

2. Horizontal and vertical alignment of the sewer after the construction must be verified and certified by a registered professional engineer.

a. Accurate record or as-built drawings must be prepared showing the physical location of the pipe in the ground, and submitted to the division in accordance with the requirements of R317-3-1.

2.5. Installation Requirements

A. Standards

1. The technical specifications shall require that installation be in accordance with the requirements based on the criteria, standards and procedures established by:

a. this rule;

b. recognized industry standards and practices as published in their technical publications;

c. the product manufacturer's recommendations and guidance;

d. Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and National Electrical Code;

e. American Society of Testing Materials;

f. American National Standards Institute; and

g. Occupational Safety and Health Administration (OSHA), US Department of Labor or its succeeding agencies.

2. Requirements shall be set forth in the specifications for the pipe and methods of bedding and backfilling thereof so as not to damage the pipe or its joints, impede cleaning operations and future tapping, nor create excessive side fill pressures or ovalation of the pipe, nor seriously impair flow capacity.

B. Identification of Sewer Lines. A clearly labelled tracer location tape shall be placed two feet above the top of sewer lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

C. Deflection Test

1. Deflection test shall be performed on all flexible pipes. The test shall be conducted after the final backfill has been in place at least 30 days.

2. No pipe shall show a deflection in excess of 5 percent.

3. If the deflection test is run using a rigid ball or mandrel, it shall have a diameter equal to 95 percent of the inside diameter of the pipe. The test shall be performed without mechanical pulling devices.

D. Joints and Infiltration

1. Joints. The installation procedures of joints and the materials to be used shall be included in the specifications. Sewer joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system.

2. Leakage Tests. Procedures for leakage tests shall be specified. This may include appropriate water or low pressure air testing. The leakage outward or inward (exfiltration or infiltration) shall not exceed 200 gallons per inch of pipe diameter per mile per day (0.19 cubic meter per centimeter of pipe diameter per kilometer per day) for any section of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of 2 feet (0.61 meter). The air test, if used, shall, as a minimum, conform to the test procedure described in the American Society of Testing Materials

standards. The testing methods selected should take into consideration the range in ground water elevations projected during the test.

E. Inspection

1. The specifications shall include requirements for inspection of manholes for water-tightness prior to placing in service, including television inspection.

2. Records of television inspection shall be retained for future reference.

2.6. Manholes

A. Location. Manholes shall be installed at:

1. the end of each line exceeding 150 feet (46 meters) in length;

2. all changes in grade, size, or alignment;

3. all intersections; and

4. distances not greater than:

a. 400 feet (120 meters) for sewers 15 inches (38 centimeters) or less; and

b. 500 feet (150 meters) for sewers 18 inches (46 centimeters) to 30 inches (76 centimeters).

5. Distances up to 600 feet (180 meters) may be approved in cases where adequate cleaning equipment for such spacing is provided.

6. Greater spacing may be permitted in larger sewers.

7. Cleanouts shall not be substituted for manholes nor installed at the end of lines greater than 150 feet (46 meters) in length.

B. Drop Type Manholes

1. A drop pipe should be provided for a sewer entering a manhole at an elevation of 24 inches (61 centimeters) or more above the manhole invert. Where the difference in elevation between the incoming sewer and manhole invert is less than 24 inches (61 centimeters), the invert should be filleted to prevent solids deposition.

2. Drop manholes should be constructed with an outside drop connection. If an inside drop connections is necessary, it shall be secured to the interior wall of the manhole and provide access for cleaning.

3. Due to the unequal earth pressures that would result from the backfilling operation in the vicinity of the manhole, the entire outside drop connection shall be encased in concrete.

C. Diameter. The minimum diameter of manholes shall be 48 inches (1.22 meters); larger diameter manholes are preferable for large diameter sewers. A minimum diameter of 22 inches (56 centimeters) shall be provided for safe access.

D. Flow Channel. The flow channel through manholes should be made to conform in shape and slope to that of the sewers. The depth of flow channels should be up to one-half to three-quarters of the diameter of the sewer. Adjacent floor area should drain to the channel with the minimum slope of 1 inch per foot (8.3 centimeters per meter).

E. Watertightness

1. Manholes shall be of the pre-cast concrete or poured-in-place concrete type. Manholes shall be waterproofed on the exterior.

2. Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place.

3. Watertight manhole covers shall be used wherever the manhole tops may be flooded by street runoff or high water. Locked manhole covers may be desirable in isolated easement locations or where vandalism may be a problem.

F. Electrical. Electrical equipment installed or used in manholes shall conform to appropriate National Electrical Code requirements.

2.7. Inverted Siphons. Inverted siphons shall consist of at least two barrels, with a minimum pipe size of 6 inches (15 centimeters) with an arrangement to exclude debris and solids. The siphon shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding; and in general, sufficient head shall be provided and pipe sizes selected to secure velocities of at least 3.0 feet per second (0.92 meter per second) for average flows. The inlet and outlet details shall be so arranged that the normal flow is diverted to 1 barrel, and that either barrel may be cut out of service for cleaning. The vertical alignment should permit cleaning and maintenance.

2.8. Sewers In Relation To Streams

A. Location of Sewers on Streams

1. The top of all sewers entering or crossing streams shall be at a sufficient depth below the natural bottom of the stream bed to protect the sewer line. In general, the following cover requirements must be met:

a. one foot (30 centimeters) of cover is required where the sewer is located in bedrock;

b. three feet (90 centimeters) of cover is required in other material;

c. cover in excess of 3 feet (90 centimeters) may be required in streams having a high erosion potential; and

d. in paved stream channels, the top of the sewer must be placed below the bottom of the channel pavement.

2. If the proposed sewer crossing will not interfere with the future improvements to the stream channel, then reduced cover may be permitted.

B. Horizontal Location. Sewers shall be located along streams outside of the stream bed and sufficiently removed therefrom to provide for future possible stream widening and to prevent pollution by siltation during construction.

C. Structures. The sewer outfalls, headwalls, manholes, gate boxes, or other structures shall be located so they do not interfere with the free discharge of flood flows of the stream.

D. Alignment

1. Sewers crossing streams should be designed to cross the stream as nearly at right angles to the stream flow as possible, and shall be free from change in grade.

2. Sewer systems shall be designed to minimize the number of stream crossings.

E. Construction

1. Materials. Sewers entering or crossing streams shall be constructed of cast or ductile iron pipe with mechanical joints; otherwise they shall be constructed so they will remain watertight and free from changes in alignment or grade. Material used to backfill the trench shall be stone, coarse aggregate, washed gravel, or other materials which will not cause siltation.

2. Siltation and Erosion. Construction methods that will minimize siltation and erosion shall be employed. The design engineer shall include in the project specifications the method(s) to be employed in the construction of sewers in or near streams to provide adequate control of siltation and erosion. Specifications shall require that cleanup, grading, seeding, and planting or restoration of all work areas shall begin immediately. Exposed areas shall not remain unprotected for more than seven days.

F. Aerial Crossings

1. A carrier pipe shall be provided for all aerial sewer crossings. Support shall be provided for all joints in pipes utilized for aerial crossings. The supports shall be designed to prevent frost heave, overturning and settlement.

2. Precautions against freezing, such as insulation and increased slope, shall be provided. Expansion jointing shall be provided between above-ground and below-ground sewers.

3. The design engineer shall consider the impact of flood waters and debris for aerial stream crossings. The bottom of the pipe should be placed below the elevation of twenty-five (25) year flood. Crossings, in no case, shall block the channel.

2.9. Protection of Water Supplies. The applicant must

review the requirements stated in R309-112-2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

A. Water Supply Interconnections. There shall be no physical connections between a public or private potable water supply system and a sewer, or appurtenance thereto which would permit the passage of any sewage or polluted water into the potable supply. No water pipe shall pass through or come in contact with any part of a sewer manhole.

B. Relation to Water Mains

1. Horizontal Separation

a. Sewers shall be laid at least 10 feet (3.0 meters) horizontally from any existing water main. The distance shall be measured edge to edge. In cases where it is not practical to maintain a ten foot separation, a deviation may be allowed based on the supportive data from the design engineer. Such deviation may allow installation of the sewer closer to a water main, provided that the sewer is laid:

(1) in a separate trench, or

(2) on an undisturbed earth shelf located on one side of the sewer trench, or

(3) in the sewer trench which has been backfilled and compacted to not less than 95 percent of the optimum density as determined by the ASTM Standard D-690, as amended, and

b. In each of the above cases, the bottom of the water main shall be at least 18 inches (46 centimeters) above the top of the sewer.

2. Crossings. Sewers crossing above water mains shall be laid to provide a minimum vertical distance of 18 inches (46 centimeters) between the outside of the water main and the outside of the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water main joints. Where a water main crosses under a sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main.

3. Special Conditions. When it is impossible to obtain proper horizontal and vertical separation as stated above, the sewer shall be designed and constructed of cast iron, ductile iron, galvanized steel or protected steel pipe with mechanical joints for the minimum distance of 10 feet on either side of the point of crossing. The design engineer may use other types of joints if equivalent joint integrity is demonstrated. The lines shall be pressure tested to assure watertightness before backfilling.

R317-3-3. Sewage Pumping Stations.

3.1. General. Sewage pumping station structures, and electrical and mechanical equipment shall be protected from physical damage that would be caused by a 100-year flood. Sewage pumping stations must remain fully operational and accessible during a 25-year flood.

3.2. Design

A. Pumping Rates. The pumps and controls of main pumping stations, and especially pumping stations pumping to the treatment works or operated as part of the treatment works, should be selected to operate at varying delivery rates to permit discharging sewage at approximately its rate of delivery to the pump station.

B. System - Head Calculation

1. The design engineer shall submit system-head calculations and curves. System-head curves for C values of 100, 120 and 140 in the Hazen William's equation for calculating head loss corresponding to minimum, median and maximum water levels shall be developed.

2. A system-head curve for C value of 120 corresponding to median (normal operating) water level shall be used to make preliminary selection of motor and pump. The pump and motor must operate satisfactorily over the entire range of system-head curves for C values of 100 and 140 corresponding to minimum and maximum water levels intersected by the head-discharge relationship of a given pump.

3. Pumps and motors shall be sized for the 10-year peak flows; preferably the 20-year sewage flow requirements. These operating points shall be shown on the system-head curves.

C. Accessibility. The pumping station shall be readily accessible by maintenance vehicles during all weather conditions. The facility should be located off the traffic way of streets and alleys.

D. Grit. Where it is necessary to pump sewage before grit removal, the design of the wet well and pump station piping shall be such that operational problems from the accumulation of grit are avoided.

E. Odor and Corrosion Control. The pumping station design should incorporate measures for:

1. mitigating the effects of sulfide corrosion to structure and equipment; and

2. effective odor control when a populated area is within close proximity.

F. Structures

1. Dry wells, including their superstructure, shall be completely separated from the wet well.

2. Provision shall be made to facilitate maintenance and removal of pumps, motors, and other mechanical and electrical equipment.

3. Safe means of access and proper ventilation shall be provided to dry wells and to wet wells containing either bar screens or mechanical equipment requiring inspection or maintenance.

a. For built-in-place pump stations, a stairway with rest landings shall be provided at vertical intervals not to exceed 12 feet (3.7 meters). For factory-built pump stations over 15 feet (4.6 meters) deep, a rigidly fixed landing shall be provided at vertical intervals not to exceed 10 feet (3.0 meters). Where a landing is used, a suitable and rigidly fixed barrier shall be provided to prevent an individual from falling past the intermediate landing to a lower level.

b. Where space requirements are insufficient, the design may provide for a manlift or elevator in lieu of landings in a factory-built station if the design includes an emergency access or exit.

c. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements, if more stringent than the ones stated above, shall be incorporated in the design.

4. Construction Materials. The materials selected in construction and installation must be safe and able to withstand adverse operating environmental conditions caused by presence of hydrogen sulfide and other corrosive gases, greases, oils, and other constituents frequently present in sewage.

3.3. Pumps and Pneumatic Ejectors

A. Multiple Units

1. At least two pumps or pneumatic ejectors shall be provided. A minimum of three pumps shall be provided for stations handling flows greater than 1 million gallons per day (3,785 cubic meters per day).

2. If only two units are provided, they should have the same capacity. Each shall be capable of handling flows in excess of the expected maximum flow. Where three or more units are provided, they should be designed to fit actual flow conditions and must be of such capacity that with any one of the largest units out of service, the remaining units shall have capacity to handle maximum sewage flows.

B. Protection Against Clogging

1. Pumps handling sewage from 30 inch (76 centimeters) or larger diameter sewers shall be protected by readily accessible bar racks from clogging or damage.

2. Bar racks should have clear openings not exceeding 1-

1/2 inches (6.4 centimeters). The design shall provide for a mechanical hoist.

3. The design engineer shall consider installation of mechanically cleaned and duplicate bar racks in the pumping stations handling larger than five million gallons per day (18,900 cubic meters per day) rate of flow.

4. Small pumping stations pumping less than one million gallons per day (3,785 cubic meters per day) shall be equipped with bar racks or inline grinding devices, etc., to prevent clogging.

C. Pump Openings. Except where grinder pumps are used, pumps shall be capable of passing spheres of at least 3 inches (7.6 centimeters) in diameter, and pump suction and discharge piping shall be at least 4 inches (10.2 centimeters) in diameter.

D. Priming. The pump shall be so placed that it will operate under a positive suction head under normal operating conditions, except for submersible pumping stations.

E. Electrical Equipment. Electrical systems and components (e.g., motors, lights, cables, conduits, switchboxes, and control circuits) in raw sewage wet wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class 1 Group D, Division 1 locations. In addition, equipment located in the wet well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided for all pumping stations. When such equipment is exposed to weather, it shall as a minimum, meet the requirements of weatherproof equipment (NEMA 3R).

F. Intake. Each pump should have an individual intake. Turbulence should be avoided near the intake in wet wells. Intake piping should be as straight and short as possible.

G. Dry Well Dewatering. A separate sump pump equipped with dual check valves shall be provided in dry wells to remove leakage or drainage. Discharge shall be located as high as possible. A connection to the pump suction is also recommended as an auxiliary feature. Water ejectors connected to a potable water supply will not be approved. All floor and walkway surfaces should have an adequate slope to a point of drainage. Pump seal water shall be piped to the sump.

H. Controls

1. Type. Control systems for liquid level monitoring shall be of the air bubbler type, the capacitance type, the encapsulated float type, or the non-contact type. The selection of type of controls must be based on wastewater characteristics and other site related conditions. The executive secretary may approve the existing float-tube control systems on pumping stations being upgraded. The electrical equipment shall comply with the National Electrical Code requirements for Class I, Group D, Division 1 locations.

2. Location. The level control system shall be located away from the turbulence of incoming flow and pump suction.

3. Alternation. The design engineer must consider automatic alternation of the sequencing of pumps in use.

I. Valves

1. Suction Line. An isolation valve shall be placed on the suction line of each pump except on submersible pumps.

2. Discharge Line

a. Isolation and check valves shall be placed on the discharge line of each pump. The check valve shall be located between the isolation valve and the pump.

b. Check valves shall not be placed in the vertical run of discharge piping unless the valve is designed for that specific application.

c. Ball valves may be permitted in the vertical runs.

d. All valves shall be suitable for the material being handled, and capable of withstanding normal operating pressure and water hammer.

e. Where limited pump backspin will not damage the pump and low discharge head conditions exist, a short individual force main for each pump, may be approved by the executive secretary in lieu of a discharge manifold.

3. Location. Valves shall not be located in wet well. They shall be located in a dry well adjacent to the pumps or in an adjacent isolated pit appropriately protected from physical, weather or freezing damage, with proper access for operation and maintenance.

J. Wet Wells

1. Divided Wells. Wet well should be divided into multiple sections, properly interconnected, to facilitate repairs and cleaning, and non-turbulent hydraulic operating condition to each pump inlet.

2. Size. The wet well size and level control settings shall be appropriate to avoid heat buildup in the pump motor due to frequent starting (short cycling), and septic conditions due to excessive detention time.

3. Floor Slope. The wet well floor shall have a minimum slope of one to one to the hopper bottom. The horizontal area of the hopper bottom shall be not greater than necessary for proper installation and function of the pump inlet.

K. Ventilation. All pump stations must be ventilated to maintain safe operating environment. Where the pump pit is below the ground surface, mechanical ventilation is required, so arranged as to independently ventilate the dry well and the wet well if screens or mechanical equipment requiring maintenance or inspection are located in the wet well. There shall be no interconnection between the wet well and dry well ventilation systems. In pits over 15 feet (4.6 meters) deep, multiple inlets and outlets are recommended. Dampers should not be used on exhaust or fresh air ducts. Fine screens or other obstructions in air ducts should be avoided to prevent clogging. Switches for operation of ventilation equipment should be marked and located for convenient operation from outside of the enclosed environment. All intermittently operated ventilating equipment shall be interconnected with the respective pit lighting system. Automatic controls are recommended for intermittently ventilated pump stations. Fan parts should be of non-corrosive material. All parts adjacent to moving ones should be of non-sparking materials. Consideration should be given to installation of automatic heating and dehumidification equipment.

1. Wet Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 12 complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Ventilating equipment should force air into wet well rather than exhaust it from wet well.

2. Dry Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 6 complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

L. Flow Measurement. Continuous measuring and recording of sewage flow shall be provided at all pumping stations with a design pumping capacity greater than one million gallons per day (3,785 cubic meters per day).

M. Water Supply. There shall be no physical connection between any potable water supply and a sewage pumping station which under any condition might cause contamination of the potable water supply. The potable water supply to a pumping station shall be protected against cross connection or backflow.

3.4. Self-Priming Pumps. Self-priming pumps shall be capable of rapid priming and repriming at the lead pump on elevation. Such self-priming and repriming shall be accomplished automatically under design operating conditions. Suction piping should not exceed the size of the pump suction and shall not exceed 25 feet (7.6 meters) in total length. Priming lift at the lead pump on elevation shall include a safety factor of at least 4 feet (1.2 meters) from the maximum

allowable priming lift for the specific equipment at design operating conditions. The combined total of dynamic suction lift at the pump off elevation and required net positive suction head at design operating conditions shall not exceed 22 feet (6.7 meters).

3.5. Submersible Pump Stations. Submersible pump stations may be used for flows less than 0.25 million gallons per day (946 cubic meters per day). The executive secretary may approve submersible pump stations for flows greater than 0.25 million gallons per day (946 cubic meters per day), based on operational, reliability and maintenance considerations. The submersible pumps stations shall meet the design requirements stated above, except as modified in this section.

A. Construction. Submersible pumps and motors shall be designed specifically for raw sewage use, including totally submerged operation during a portion of each pumping cycle. An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

B. Pump Removal. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well.

C. Electrical

1. Power Supply and Control. Electrical supply, control and alarm circuits shall be designed to allow for disconnection of the equipment from outside and inside of pumping station. Terminals and connectors shall be protected from corrosion by location outside of wet well or through use of watertight seals. If located outside of the pumping station, weatherproof equipment shall be used.

2. Controls. The motor control center shall be located outside of the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal.

3. Power Cord. Pump motor power cords shall be designed for flexibility and serviceability under severe service conditions and shall meet the requirements of the Mine Safety and Health Administration for trailing cables. Ground fault interruption protection shall be used to deenergize the circuit in the event of any failure in the electrical integrity of the cable. Power cord terminal fittings shall be corrosion-resistant and constructed in a manner to prevent the entry of moisture into the cable, shall be provided with strain relief appurtenances, and shall be designed to facilitate field connecting.

3.6. Valves. Valves shall be located in a separate valve pit. Accumulated water shall be drained to the wet well or the soil. If the valve pit is drained to the wet well, an effective method shall be provided to prevent sewage gases and liquid from entering the pit during surcharged wet well conditions.

3.7. Alarm Systems.

A. Alarm systems shall be provided for pumping stations. The alarm shall be activated in cases of power failure, high water level in dry or wet well, pump failure, use of the lag pump, air compressor failure, or any other pump malfunction.

B. Pumping station alarms shall be telemetered, including identification of the alarm condition, to the operating agency's facility that is manned 24 hours a day. If such a facility is not available and 24-hour holding capacity is not provided, the alarm shall be telemetered to the operating agency's facility during normal working hours and to the home of the person(s) responsible for the lift station during off-duty hours.

C. The executive secretary may approve audio-visual alarm systems with a self-contained power supply in lieu of the telemetering system outlined above, depending upon location, station holding capacity and inspection frequency.

3.8. Emergency Operation

A. Pumping stations and collection systems shall be designed to prevent bypassing of raw sewage and backup into the sewer system. For use during possible periods of extensive power outages, mandatory power reductions, or uncontrolled storm events, a controlled high-level wet well overflow or emergency power generator shall be provided. Where a high level overflow is utilized, storage or retention tanks, or basins, shall be provided having at least a 2-hour retention capacity at the anticipated overflow rate.

B. The applicant must review the requirements of R317-6 (Ground Water Quality Protection Rule) for compliance with the said rule for earthen retention basins.

C. The operating agency shall provide:

1. an in-place or portable pump, driven by an internal combustion engine or an emergency generator capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of one million gallons per day (3,785 cubic meters per day), and

2. an engine-driven generating equipment or an independent source of electrical power or emergency generators capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of five million gallons per day (18,925 cubic meters per day).

3.9. Auxiliary and Emergency Equipment Requirements

A. General. The following general requirements shall apply to all internal combustion engines used to drive auxiliary pumps, service pumps through special drives, or electrical generating equipment.

1. Engine Protection. The engine must be protected from damaging operating conditions. Protective equipment shall shut down the engine and activating an alarm on site unless continuous manual supervision is planned. Protective equipment shall monitor for conditions of low oil pressure and overheating, Oil pressure monitoring is not required for engines with splash lubrication.

2. Size. The engine shall have adequate rated power to start and continuously operate all connected loads.

3. Fuel Type. The type of fuel must be carefully selected for maintaining reliability and ease of starting, especially during cold weather conditions. Unused fuel from the fuel storage tank should be removed annually, and the tank refilled with fresh fuel.

4. Engine Ventilation. The engine shall be located above grade with adequate ventilation of fuel vapors and exhaust gases.

5. Routine Start-up. All emergency equipment shall be provided with instructions indicating the need for regular starting and running of such units at full loads.

6. Protection of Equipment. Emergency equipment shall be protected from damage at the restoration of regular electrical power.

B. Engine-Driven Pumping Equipment. Where permanently installed or portable engine-driven pumps are used, the following requirements in addition to general requirements apply:

1. Pumping Capacity. Engine-driven pump(s) shall be capable of pumping at the design pumping rates unless storage capacity is available for flows in excess of pump capacity. Pumps shall be designed for anticipated operating conditions, including suction lift if applicable.

2. Operation. Provisions shall be made for automatic and manual start-up and load transfer. The pump must be protected against damage from adverse operating conditions. Provisions should be considered to allow the engine to start and stabilize at operating speed before assuming the load. Where manual start-up and transfer is justified, storage capacity and alarm system must meet the requirements stated hereinabove.

3. Portable Generating Equipment. Where portable generating equipment or manual transfer of power to the

pumping equipment is provided, sufficient storage capacity shall be provided in the design of pumping station, to allow time for detection of pump station failure and transportation and connection of generating equipment. The use of special electrical connections and double throw switches are recommended for connecting portable generating equipment.

3.10. Instructions and Equipment

A. Sewage pumping stations and their operators must be supplied with a complete set of operational instructions, including emergency procedures, maintenance schedules, special tools, and necessary spare parts.

B. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

3.11. Force Mains

A. Velocity. A velocity of not less than 2 feet per second (0.61 meter per second) shall be maintained at the average design flow, to avoid septic sewage and resulting odors.

B. Air Relief Valve. An automatic air relief valve shall be placed at high points in the force main to prevent air locking.

C. Termination. Force mains should enter the gravity sewer system at a point not more than 2 feet (30 centimeters) above the flow line of the receiving manhole.

D. Design Pressure. The force main and fittings, including reaction blocking, shall be designed to withstand normal pressure and pressure surges (water hammer).

E. Special Construction. Force main construction near streams or used for aerial crossings shall meet the requirements stated in Sewers.

F. Design Friction Losses

1. Friction losses through force mains shall be based on the Hazen and Williams formula or other hydraulic analysis to determine friction losses. When the Hazen and Williams formula is used, the design shall be based on the value of C equal to 120; for unlined iron or steel pipe the value of C equal to 100 shall be used.

2. When initially installed, force mains will have a significantly higher C factor. The higher C factor should be considered only in calculating maximum power requirements.

G. Separation from Water Main. The applicant or the design engineer must review the requirements stated in R309-112.2 - Distribution System rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

H. Identification. A clearly labelled tracer location tape shall be placed two feet above the top of force mains less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

R317-3-4. Treatment Works.

4.1. Plant Location

A. The treatment plant structures and all related equipment shall be protected from physical damage by the 100-year flood. Treatment works must remain fully operational and accessible during the 25-year flood.

B. These conditions shall apply to all new facilities under construction as well as the existing facilities being expanded, upgraded or modified.

4.2. Quality of Effluent. The effluent requirements and water quality standards established in the discharge permit, R317-1 (Definitions and General Requirements), R317-2 (Standards of Quality for Waters of the State) shall be used to determine the required degree of wastewater treatment, and unit processes and operations.

4.3. Design

A. Basis of Design. The plant design shall be based on the higher value of:

1. a moving average of daily rates of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests over a period of 30 consecutive days; or

2. an average of values rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, over a period of month; or

3. the rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, equal to or greater than 92 percent of the daily flow rate and wastewater strength data.

B. Hydraulic Design. The hydraulic capacities of all units and conveyance structures shall be computed and checked for the maximum and average design rates of flow with one largest unit out of service. No overtopping of any structure under any condition shall be permitted.

1. New Systems. The design for sewage treatment plants shall be based upon an average daily per capita flow of 100 gallons (0.38 cubic meter) unless the applicant provides and justifies a better estimate of flow based on water use data. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

2. Existing Systems. For an existing system, the applicant may use the data based on both dry-weather and wet-weather conditions. The data over a minimum period of one year shall be taken as the basis for the design.

C. Organic Design

1. New System Design

a. Domestic waste treatment design shall be on the basis of at least 0.17 pounds (0.08 kilogram) or 200 milligrams per liter of BOD_5 per capita per day and 0.20 pounds (0.09 kilogram) or 250 milligrams per liter of suspended solids per capita per day, unless information is submitted to justify alternate designs.

b. When garbage grinders are used in areas tributary to a domestic treatment plant, the design basis may be increased to 0.22 pounds (0.10 kilogram) or 260 milligram per liter of BOD_5 per capita per day and 0.25 pounds (0.11 kilogram) or 300 milligram per liter of suspended solids per capita per day.

c. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

d. Other approved methods for measurement of organic strength of wastewater published in Standard Methods for Examination of Water and Wastewater, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF), will be accepted in lieu of the five-day biochemical oxygen demand (BOD_5) test.

2. Existing Systems

a. For an existing system, the applicant may use the data based on the actual strength of the wastewater as determined by analysis of composite samples for five-day biochemical oxygen demand (BOD_5) and suspended solids. An appropriate increment for growth shall be included in the basis of design.

b. The data over a minimum period of one year shall be taken as the basis for the design.

D. Shock Loadings. The applicant shall consider the shock loadings of high concentrations and diurnal peaks for short periods of time on the treatment process, particularly for small treatment plants.

E. Design by Analogy. The applicant may utilize the data from similar municipalities in the case of new systems, provided that the reliability and applicability of such data is established through thorough investigations and documentation.

F. Flow Conduits. All piping and channels shall be designed to carry the maximum rates of flows. The incoming sewer shall be designed for unrestricted flow. Bottom corners of the channels must be filleted. Conduits shall be designed to

avoid creation of pockets and corners where solids can accumulate. Suitable gates shall be placed in channels to seal off unused sections which might accumulate solids. The use of shear gates or stop planks is permitted where they can be used in place of gate valves or sluice gates. Corrosion resistant materials shall be used for these control gates.

G. Arrangement of Process Units. The design should provide for an arrangement of component parts of the plant, for greatest operating and maintenance convenience, reliability flexibility, economy, continuity of maximum effluent quality, and ease of installation of future units.

H. Flow Division Control. The design shall provide for flow division control facilities to insure organic and hydraulic loading control to various process units. Convenient, easy and safe access, change, observation, and maintenance shall be considered in the design of such facilities. Flow division shall be measured using flow measurement devices to assure uniform loading of all unit processes and operations.

4.4. Plant Design Details

A. Mechanical Equipment. The specifications should provide for:

1. services of a representative of the manufacturer to supervise the installation and initial operation of major items of mechanical equipment; and

2. performance tests of the installed equipment before acceptance by the applicant.

B. Unit Bypasses

1. A minimum of two units in the liquid treatment process train shall be provided for all unit processes and operations in all plants rated at over 1 million gallons per day (3,785 cubic meters per day).

2. The executive secretary will approve any exceptions based on reliability and operability of the components.

3. The design shall provide for properly located and arranged bypass structures and piping so that each unit of the plant can be removed from service independently. The bypass design shall facilitate plant operation during unit maintenance and emergency repair so as to minimize deterioration of effluent quality and insure rapid process recovery upon return to normal operational mode.

C. Unit Bypass During Construction. Any bypass during construction or operation must be approved by the executive secretary before such bypass occurs, as provided in this rule.

D. Drains. The design shall incorporate means to completely drain each unit with a discharge to a point within the process or the plant.

E. Protection of Structures. The design shall incorporate hydrostatic pressure relief devices to prevent flotation of structures.

F. Pipe Cleaning and Maintenance. Fittings, valves, and other appurtenances shall be provided for pipes subject to clogging, to facilitate proper cleaning through mechanical cleaning or flushing. Pipes subject to clogging, such as pipes carrying sludge, shall be lined with a material which creates a smooth and nonadhering surface, thereby reducing clogging and resistance to flow.

G. Construction Materials. The materials of construction and equipment shall be resistant to hydrogen sulfide and other corrosive gases, greases, oils, chemicals, and similar constituents frequently present in sewage. This is particularly important in the selection of metals and paints. Contact between dissimilar metals should be avoided to minimize galvanic action, and consequent corrosion.

H. Painting

1. Piping within the plant shall be color coded to facilitate identification of piping, particularly in the plants rated over 5 million gallons per day (18,925 cubic meters per day). Table R317-3-4.4(H)(1) shows color and identification scheme recommended by the American National Standards Institute (ANSI 253.1 and 13.1) shall be used for the purposes of standardization.

2. The labels shall be stenciled in conformance with the ANSI standard A13.1.

3. The executive secretary may approve painting of piping with one color with a labelling scheme in conformance with the ANSI standard A13.1 provided that:

a. labels are color coded as directed above;

b. piping contents and direction of flow are legibly stenciled on the label; and

c. labels are securely on the piping at interval and all locations required in the above referenced standard.

I. Operating Equipment. A complete outfit of tools, accessories, and spare parts necessary for the plant operator's use should be provided. Readily-accessible storage space and workbench facilities should be provided, and consideration be given to provision of a garage for large equipment storage, maintenance, and repair.

J. Erosion Control During Construction. Effective site erosion control shall be provided during construction.

K. Grading and Landscaping. The site should be graded and landscaped upon completion of the plant. Concrete or gravel walkways should be provided for access to all units. Steep slopes should be avoided to prevent erosion. Surface water shall not be permitted to drain into any unit. Particular care shall be taken to protect all treatment plant components from storm water runoff.

4.5. Plant Outfall Lines

A. Discharge Impact Control. The outfall sewer shall be designed to discharge to the receiving stream in a manner not to impair the beneficial uses of the receiving stream and acceptable to the executive secretary. The outfall design should provide for:

1. Free fall or submerged discharge at the site selected;

2. Cascading of effluent to increase dissolved oxygen concentration in the effluent; and

3. Limited or complete dispersion of discharge across stream to minimize impact on aquatic life movement, and growth in the immediate reaches of the receiving stream; and

B. Protection and Maintenance. The outfall sewer shall be so constructed and protected against the effects of floodwater, ice, or other hazards as to reasonably insure its structural stability and freedom from stoppage.

C. Sampling Provisions. All outfall lines shall be designed with a safe and convenient access, preferably using a manhole, so that a sample of the effluent can be obtained at a point after the final treatment process, and before discharge to or mixing with the receiving waters.

4.6. Essential Facilities

A. Emergency Power Facilities

1. General. All plants shall have an alternate source of electric or mechanical power to allow continuity of operation during power failures. Methods of providing alternate sources include:

a. provision of at least two independent sources of power, such as feeders, grid, etc., to the plant;

b. portable or in-place internal combustion engine equipment which will generate electrical or mechanical energy; or

c. portable pumping equipment when only emergency pumping is required.

2. Power for Aeration. Standby power generating capacity normally is not required for aeration equipment used in the activated sludge type processes or aerated lagoons. In cases where a history of long-term (4 hours or more) power outages have occurred, auxiliary power for minimum aeration of the activated sludge type processes or aerated lagoon will be required. Full power generating capacity may be required when discharge is to critical stream segments to protect downstream

uses identified in R317-2 (Standards for Quality for Waters of the State).

3. Power for Disinfection. Standby power generating capacity shall include the capacity needed for continuous disinfection of wastewater during power outages.

B. Plant Water Supply

1. General. An adequate supply of potable water under pressure should be provided for use in the laboratory and for general cleanliness around the plant. No piping or other connections shall exist in any part of the treatment works which, under any conditions, might cause the contamination of a potable water supply. The chemical quality of the water should be checked for suitability for its intended uses such as in heat exchangers, chlorinators, etc.

2. Direct Connections

a. Potable water from a municipal or separate supply may be used directly at points above grade for hot and cold supplies in lavatory, water closet, laboratory sink (with vacuum breaker), shower, drinking fountain, eye wash fountain, and safety shower; unless local authorities require a positive break at the property line.

b. The applicant must review the requirements stated in R309-112.2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

c. Hot water for any of the above units shall not be taken directly from a boiler or piping used for supplying hot water to a sludge heat exchanger or digester heating unit.

3. Indirect Connections

a. Where a potable water supply is used for any purpose in a plant, a break tank, pressure pump, and pressure tank shall be provided. Water shall be discharged to the break tank through an air gap at least 6 inches (15.2 centimeters) above the maximum flood line or the spill line of the tank, whichever is higher.

b. A sign shall be permanently posted at every hose bib, faucet, hydrant, or sill cock located on the water system beyond the break tank to indicate that the water is not safe for drinking.

4. Separate Potable Water Supply. Where it is not possible to provide potable water from a public water supply, a separate well may be provided. Location and construction of the well shall be in accordance with the requirements of R309, Drinking Water and Sanitation Rules.

5. Separate Non-Potable Water Supply. Where a separate non-potable water supply or plant effluent is to be provided, a break tank will not be necessary, but all system outlets shall be posted with a permanent sign indicating the water is not safe for drinking.

C. Sanitary Facilities. Toilet, shower, lavatory, and locker facilities shall be provided in convenient locations to serve the expected staffing level at the plant.

D. Floor Slope. All floor surfaces shall be sloped adequately to a collection floor drain system.

E. Stairways

1. Stairways shall be installed wherever possible in lieu of ladders. Spiral or winding stairs are permitted only for secondary access where dual means of egress are provided. Stairways shall have slopes between 50 degrees and 30 degrees (preferably nearer the latter) from the horizontal to facilitate carrying samples, tools, etc. Each tread and riser shall be of uniform dimension in each flight. Minimum tread run shall not be less than 8 inches (20.3 centimeters). The sum of the tread run and riser shall not be less than 17 inches (43 centimeters) nor more than 18 inches (46 centimeters). A flight of stairs shall consist of not more than a 12-foot (3.7 meters) continuous rise without a platform.

2. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

4.7. Flow Measurement. Flow measurement devices, preferably of the primary type (devices which create a hydrodynamic condition that is sensed by the secondary element), shall be provided at the plant to continuously indicate, totalize and record volume of wastewater entering the plant in a unit time.

A. Flumes. Installation of flumes shall be as follows:

1. Flumes with throat widths of less than 6 inches (15 centimeters) shall not be installed. Throat width shall be selected to measure the entire range of anticipated flow rates at all measurement locations.

2. Locations close to turbulent, surging or unbalanced flow, or a poorly distributed velocity pattern shall be avoided. For super-critical upstream flow, a hydraulic jump should be forced to occur in a section upstream of the flume at a distance of at least 30 times maximum upstream operating depth of flume followed by a straight approach section of a length specified in this rule.

3. For flumes with throat width less than half the width of the approach channel, the length of approach channel - straight upstream section - shall be the greater of 20 times the throat width or ten times maximum upstream operating depth in flume.

4. For flumes with throat width greater than half the width of the approach channel, the length of approach channel - straight upstream section - shall be not less than ten times the maximum upstream operating depth in flume.

5. Parshall flumes shall be permitted only in locations where free discharge conditions exists on the downstream side at the average design flow. Submergence must not exceed 60 percent at the maximum design flow.

6. The stilling well, if used, and secondary measuring elements, such as floats, sensors, or gages, shall be protected against extreme weather conditions.

B. Other Flow Measurement Devices. Effluent discharged to receiving waters should be measured using flow measurement devices, such as weirs, sonic or capacitance type, etc.

C. Flow Recorders

1. Clock-wound mechanisms for recording of flow are not permitted.

2. Battery powered flow measurement devices may be permitted at locations where electrical power is not available, and continuous operability of flow measurement devices is demonstrated.

4.8. Safety and Hazardous Chemical Handling. Adequate provision shall be made to effectively protect the operator and visitors from hazards. Local, state and federal safety requirements must be reviewed and complied with. Typical items for consideration are fence, splash guards, hand and guard rails, labeling of containers and process piping, warning signs, protective clothing, first aid equipment, containments, eye-wash fountains and safety showers, dust collection, portable emergency lighting, etc.

4.9. Laboratory.

A. Treatment plants rated in excess of 1 million gallons per day (3,785 cubic meters per day) shall include a laboratory for making the necessary analytical determinations and operating control tests. Otherwise, the applicant shall show availability of services of state-certified laboratories on a continuous contract basis.

B. The laboratory size, bench space, equipment and supplies shall be such that it can perform analytical work for:

1. All self-monitoring parameters required by discharge permits;

2. The process control necessary for good management of each treatment process included in the design; and

3. Industrial waste control or pretreatment programs.

R317-3-5. Screening and Grit Removal.

5.1. Screening Devices. Coarse bar racks or screens shall be used to protect pumps, comminutors, flow measurement devices and other equipment.

5.2. Bar Racks and Screens

A. Location

1. Indoor. Screening devices, installed in a building where other equipment or offices are located, shall be accessible only through a separate outside entrance to protect the operating personnel and the equipment from damage and nuisance caused by gases, odors and potential flooding.

2. Outdoors. Screening devices not installed in enclosures or buildings shall be protected from freezing or other adverse environmental conditions.

B. Access. Screening areas shall be provided with proper work and safe access and egress, proper and emergency lighting, ventilation, and a convenient and safe means for removing the screenings.

C. Design and Installation

1. Bar Spacing. Clear openings between bars should be:

a. not more than 1 inch (2.54 centimeters) for manually cleaned screens; and

b. less than 5/8 of an inch (1.59 centimeters) for mechanically cleaned screens.

2. Bar Slope. Manually cleaned screens, except those for emergency use, should be placed on a slope of 30 to 45 degrees from the horizontal.

3. Approach Velocities. At average design flow conditions, approach velocities should be no less than 1.25 feet per second (38 centimeters per second), to prevent settling; and no greater than three (3) feet per second (91 centimeters per second) to prevent forcing material through the openings.

4. Channels. Dual channels shall be provided and equipped with the necessary gates to isolate flow from any screening unit. Provisions shall also be made to facilitate dewatering each unit. The channel preceding and following the screen shall be shaped to eliminate stranding and settling of solids. Entrance channels should be designed to provide equal and uniform distribution of flow to the screens.

5. Reliability. A minimum of two screens shall be provided. Each screen shall be designed to handle the peak design rate of flow. Where more than two screens are provided, the peak design rate of flow shall be handled with one of the largest units out of service. Where a single mechanical screen handles the peak design rate of flow, then other unit can be a manually cleaned screen.

6. Flow Measurement. The types and locations of flow measurement devices should be selected for reliability and accuracy. The effect of changes in backwater elevations, due to intermittent blinding and cleaning of screens, should be considered in the selection of the locations for flow measurement equipment.

7. Invert. The screen channel invert should be 3.0 to 6.0 inches (7.6-15.2 centimeters) below the invert of the incoming sewer.

D. Safety

1. Railings and Gratings.

a. All screening installations shall be equipped with guard rails and deck grating to insure operator safety.

b. The manually cleaned bar rack shall be accessible for cleaning insuring operator safety.

c. Proper guard rails and enclosures shall be used to protect the operator from moving parts of mechanically operated and cleaned screens. These guard rails and enclosures shall be removable for safe access to maintain and repair mechanically operated and cleaned screens. Catchments shall be provided to prevent dripping of liquids in multi-level installations.

2. Equipment Deactivation and Lockout. Each piece of electrical power mechanical equipment shall be equipped with a positive means of deactivating or locking out or isolating from its power source. Such device shall be located in close proximity to the equipment.

3. Removal of Screenings. The design shall provide for mechanical conveying or lifting systems for safe transport of screenings from a subgrade installation to a collection point on grade.

E. Power Control Systems

1. Timing Devices. All mechanical units which are operated by timing devices shall be provided with auxiliary override controls which will set the cleaning mechanism in operation at a preset high water elevation or water differential across the screen.

2. Electrical Fixtures and Controls. Electrical fixtures and controls in screening areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class I, Group D, Division 1 locations.

3. Manual Override. Automatic controls shall be supplemented with a manual override.

F. Disposal of Screenings

1. Facilities shall be provided for removal, handling, storage, and disposal of screenings in a sanitary manner. Separate grinding of screenings and return to the sewage flow is unacceptable. Manually cleaned screening facilities should include an accessible platform from which the operator may rake screenings easily and safely. Suitable drainage facilities shall be provided for both the platform and the storage areas.

2. Screenings may be landfilled. The ultimate disposal of screenings shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

5.3. Comminutors

A. General. Comminutors may be used in plants, excepting aerated or facultative or total containment lagoons, where mechanically cleaned bar screens are not used.

B. Design Considerations

1. Location. Comminutors should be located downstream of bar screen and any grit removal equipment.

2. Size. Comminutor capacity shall be adequate to handle the peak design rate of flow.

3. Installation.

a. A comminutor bypass channel, with manually cleaned bar screen, shall be provided. The use of the bypass channel should be automatic at depths of flow exceeding the design capacity of the comminutor. The bypass channel should be able to pass the peak design rate of flow when the comminutor channel is out of service.

b. Each comminutor that is not preceded by grit removal equipment should be protected by a 6-inch (15.2 centimeters) deep easily cleaned gravel trap.

PC Maintenance. Gates shall be provided for isolation of comminutor, comminutor channel including bypass channel for draining, repairs and maintenance. Provisions shall be made to facilitate servicing of units in place and removing units from their location for servicing.

5. Electrical Power Controls and Motors. Electrical equipment in comminutor chambers where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. Motors in areas not governed by this requirement may need protection against accidental submergence.

5.4. Grit Removal Facilities

A. General. Grit removal facilities shall be provided for all mechanical treatment plants. Pumps, comminutors, and other mechanical equipment preceding grit removal, shall be protected from the damaging effects of grit. Storage capacity shall be provided in treatment units where grit is likely to accumulate.

B. Location. Grit removal facilities should be located ahead of pumps and comminuting devices. Coarse bar racks should be placed ahead of grit removal facilities.

C. Enclosed Facilities

1. Ventilation. Uncontaminated air shall be introduced continuously at a minimum rate of 12 air changes per hour, or intermittently at a minimum rate of 30 air changes per hour. Odor control facilities are recommended.

2. Access. Grit removal facilities shall be provided with proper and safe access, and egress from equipment and facilities.

3. Electrical Work. All electrical work in enclosed grit removal areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations.

D. Outdoor Facilities. Grit removal facilities located outside the buildings shall be protected from freezing, and other adverse environmental conditions.

E. Type and Number of Units

1. Number of Units. For plants treating:

a. more than 1 million gallons per day rate of flow (3,785 cubic meters per day), two mechanically cleaned grit removal units shall be installed in a parallel configuration. Each grit channel shall be designed to handle the peak design rate of flow.

b. less than 1 million gallons per day rate of flow (3,785 cubic meters per day), a single manually cleaned or mechanically cleaned grit chamber with a bypass channel shall be provided.

2. Other types. When arrangements other than channel-type of grit removal is considered, equipment for agitation, air supply, grit collection, grit removal, and grit washing shall be provided with controls for handling variations in rates of flow, and providing operating flexibility.

F. Design Factors

1. General. The designed effectiveness of a grit removal system shall be commensurate with the requirements of the subsequent process units.

2. Inlet Configuration. Inlet turbulence shall be minimized. The inlet flow direction must be parallel to the induced roll direction within aerated grit chambers.

3. Velocity and Detention Time.

a. Horizontal Channel-type Grit Chambers.

(1) Velocity of flow through a channel-type chamber shall be controlled such that it is not less than one foot per second (30 centimeters per second) during normal variations in flow.

(2) The detention time shall be based on the size of particle to be removed but not less than 20 seconds at the maximum design flow. Velocity and detention time in the channel shall be regulated by installation of control devices such as proportional flow, Sutro weirs, etc.

b. Aerated grit chambers.

(1) The velocity of flow through an aerated grit chamber shall not be less than 1 foot per second (30 centimeters per second) during normal variations in flow, in the direction of induced roll.

(2) A minimum detention time of two to five minutes at the maximum design flow shall be provided. Rate of aeration shall not be less than 4 cubic feet per minute per lineal foot (1.5 liters per second per meter). Outlet weir shall be provided parallel to the direction of induced roll.

c. Square grit chambers. Detention time and overflow rate for square grit chambers shall be based on the size of particles intended to be removed. Overflow rate should not exceed 40,000 gallons per day per square foot of the chamber area (1,600 cubic meters per day per square meter).

4. Grit Washing. Grit should be washed before the disposal.

5. Drains. Provision shall be made for to adequately bypass, isolate and dewater each grit removal unit for maintenance.

6. Water. An adequate supply of service or non-potable plant water under pressure shall be provided for cleanup.

G. Grit Handling.

1. Mechanical equipment for hoisting or transporting grit to ground level shall be provided in grit removal facilities located in deep pits. Impervious, non-slip, working surfaces with adequate drainage shall be provided for grit handling areas. Grit transporting facilities shall be provided with protection against freezing and loss of material.

2. Grit may be landfilled. The ultimate disposal of grit shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

R317-3-6. Settling.

6.1. General Considerations

A. Number of Units. Multiple units capable of independent operation shall be provided in all plants where the design rate of flow exceed 1 million gallons per day (3,785 cubic meters per day). Plants where the design rate of flow is less than one (1) million gallons per day (3,785 cubic meters per day), shall include other provisions to assure continuity of treatment.

B. Arrangement. Settling tanks shall be arranged for optimum site utilization, and shall be consistent with the hydraulic head requirements for other ancillary units.

C. Flow Distribution. Effective flow measurement devices and control appurtenances (e.g. valves, gates, splitter, boxes, etc.) should be provided to permit proper proportioning of flow to each unit.

D. Tank Configuration. The selection of tank size and shape, and inlet and outlet type and location shall be based on the site and flow patterns.

6.2. Design Considerations

A. Dimensions.

1. The minimum length of flow from inlet to outlet should not be less than be 10 feet (3 meters) unless special provisions are made to prevent short circuiting. The sidewater depth for primary clarifiers shall be not less than 8 feet (2.4 meters).

2. Clarifiers following an activated sludge process shall have sidewater depths of at least 12 feet (3.7 meters) to provide adequate separation zone between the sludge blanket and the overflow weirs.

3. Clarifiers following fixed film reactors shall have sidewater depth of at least 8 feet (2.4 meters).

B. Surface Loading (Overflow) Rates

1. Primary Settling Tanks

a. Surface loading or overflow rates at the average design rate of flow for primary tanks shall not exceed:

(1) 600 gallons per day per square foot (24 cubic meters per square meter per day) for plants treating at the rate of flow less than 1 million gallons per day (3,785 cubic meter per day), or

(2) 1,000 gallons per day per square foot (41 cubic meters per square meter per day) for plants treating at the rate of flow more than 1 million gallons per day (3,785 cubic meter per day).

b. For primary settling, expected influent BOD_5 removal and surface loading is as shown by the relationship: E = (41.5 - (0.01 x Surface loading at average design Q)) where, E = efficiency, percent, and surface loading less than or equal to 2,000 gallons per day per square foot (82 cubic meters per square meter per day). However, anticipated higher BOD_5 removal than the one predicted using above relationship for sewage or sewage containing appreciable quantities of industrial wastes (or chemical additions to be used), shall be validated by plant performance data.

2. Intermediate Settling Tanks. Surface loading or overflow rates for intermediate settling tanks following fixed film reactor processes shall not exceed 1,000 gallons per day per square foot (41 cubic meters per square meter per day) at the average design rate of flow.

3. Final Settling Tanks

a. Settling tests should be conducted wherever a pilot

study of biological treatment is warranted by unusual waste characteristics or treatment requirements.

b. The applicant will conduct pilot testing where proposed loadings go beyond the limits set forth in this section.

c. Surface loading or overflow rates for settling tanks following fixed film processes shall not exceed 800 gallons per day per square foot (33 cubic meters per square meter per day) at the average design rate of flow.

d. Settling tanks following activated sludge processes must be designed to meet thickening as well as solids separation requirements. Surface loading or overflow, and weir overflow rates must be adjusted for the various processes to minimize the problems with sludge loadings, density currents, inlet hydraulic turbulence, and occasional poor sludge settleability. The high rate of recirculation of return sludge from the final settling tanks to the aeration or reaeration tanks requires careful consideration of above factors. The hydraulic design of intermediate and final settling tanks following the activated sludge process shall be based upon the average design rate of flow excluding activated sludge return flow as shown in Table R317-3-6.2(B)(3)(d).

C. Inlet Structures. Inlets should be designed to dissipate the inlet velocity and to distribute the flow equally both horizontally and vertically and to prevent short circuiting. Channels should be designed to maintain a velocity of at least one foot per second (0.3 meter per second) at the minimum design flow. Corner pockets and dead ends should be eliminated and corner fillets or channeling used where necessary. Provisions shall be made for elimination or removal of floating materials in inlet structures.

D. Effluent Overflow Weirs

1. General. Effluent overflow weirs shall be adjustable for leveling.

2. Location. Effluent overflow weirs shall be located to optimize actual hydraulic detention time, and minimize short circuiting.

3. Design Rates. Weir loadings shall not exceed 10,000 gallons per day per lineal foot (124 cubic meters per meter per day) for plants treating the average design rate of flow of one (1) million gallons per day (3,785 cubic meters per day) or less. Higher weir loadings may be used for plants designed for larger average flows, but shall not exceed 15,000 gallons per day per lineal foot (186 cubic meters per meter per day). If pumping is required, weir loadings must be related to pump delivery rates to avoid short circuiting.

4. Weir Troughs. Weir troughs shall be designed to prevent submergence at the maximum design rate of flow (peak daily flow), and to maintain a velocity of at least one foot per second (0.3 meter per second) at one-half of the average design rate of flow. Submergence may be permitted at the maximum design rate of flow (peak daily flow) with one unit out of service.

E. Submerged Surfaces. The tops of troughs, beams, and similar submerged construction elements shall have a minimum slope of 1.4 vertical to 1 horizontal; the underside of such elements should have a slope of 1 to 1 to prevent the accumulation of scum and solids.

F. Unit Dewatering. The bypass design shall provide for redistribution of the plant flow to the remaining units in operation.

G. Freeboard. Walls of settling tanks shall extend at least 6 inches (15 centimeters) above the surrounding ground surface and shall provide not less than 12 inches (30 centimeters) freeboard. Additional freeboard or the use of wind screens should be provided where larger settling tanks are subject to high velocity wind currents that would cause tank surface waves and inhibit effective scum removal.

6.3. Sludge and Scum Removal

A. Scum Removal. Effective scum collection and removal facilities, including baffling, shall be provided for primary, intermediate and secondary settling tanks. The unusual characteristics of scum which may adversely affect pumping, piping, sludge handling and disposal, should be recognized in design. Provisions may be made for the discharge of scum with the sludge; however, other special provisions for disposal may be necessary.

B. Sludge Removal. Sludge collection and withdrawal facilities shall be designed to assure rapid removal of the sludge. Suction withdrawal of sludge from the tank floor should be provided for activated sludge plants designed for reduction of the nitrogenous oxygen demand.

1. Sludge Hopper. When scrapers are used to move sludge into a discharge hopper, the minimum slope of the side walls shall be 1.7 vertical to 1 horizontal. Hopper wall surfaces should be made smooth with rounded corners to aid in sludge removal. Hopper bottoms shall have a maximum dimension of two feet (0.6 meter). Deep sludge hoppers for sludge thickening are not acceptable.

2. Sludge Removal Piping. Each hopper shall have an individually valved sludge withdrawal line at least six inches (15 centimeters) in diameter. The static head available for withdrawal of sludge shall be 30 inches (76 centimeters) or greater, as necessary to maintain a three foot per second (0.91 meter per second) velocity in the withdrawal pipe. Clearance between the end of the withdrawal line and the hopper walls shall be sufficient to prevent bridging of the sludge. Adequate provisions shall be made for rodding or back-flushing individual pipe runs for activated sludge secondary clarifiers except for oxidation ditch clarifiers. Piping shall also be provided to return waste sludge to primary clarifiers.

3. Sludge Removal Control. Sludge wells shall be provided with telescoping valves or other equipment for viewing, sampling and controlling the rate of sludge withdrawal. The use of sight glass and sampling valves may be appropriate. A means of measuring the sludge removal rate shall be provided. Air lift type of sludge removal must not be used for removal of primary sludges. Sludge pump motor control systems shall include time clocks and valve controls for regulating the duration and sequencing of sludge removal.

6.4. Protective and Service Facilities

A. Operator Protection. All settling tanks shall be equipped to provide safe working conditions for operators. Such features shall include machinery covers, life lines, stairways, walkways, handrails and slip resistant surfaces.

B. Mechanical Maintenance Access. The design shall provide for convenient and safe access to routine maintenance items such as gear boxes, scum removal mechanisms, baffles, weirs, inlet stilling baffle area, sludge and scum pumps, and effluent channels.

C. Electrical Fixtures and Controls. Electrical fixtures and controls in enclosed settling basins shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. The fixtures and controls shall be located so as to provide convenient and safe access for operation and maintenance. Walkways, bridge area and area around settling tanks shall be illuminated with area lighting for operating personnel safety.

R317-3-7. Biological Treatment.

7.1. Trickling Filters

A. General. Trickling filters shall be preceded by effective settling tanks equipped with scum and grease collecting devices, or other suitable pretreatment facilities.

B. Hydraulics

1. Distribution. The sewage may be distributed over the filter by rotary distributors or other suitable devices which will ensure uniform wastewater distribution to the surface area. Uniform hydraulic distribution of sewage on the filters is required.

2. For reaction type distributors, a minimum head of 24 inches (61 centimeters) between low water level in the siphon chamber and center of the arms is required. Similar allowance in design shall be provided for added pumping head requirements where pumping to the reaction type distributor is used. The applicant should evaluate other types of drivers and drives.

3. A minimum clearance of 6 inches (15 centimeters) between media and distributor arms shall be provided. Larger clearance than 6 inches (15 centimeters) must be provided where ice buildup may occur.

C. Wastewater Application. Application of the sewage shall be continuous. The piping system shall be designed for recirculation. The design must provide for routine flushing of filters by heavy dosing at intermittent intervals.

D. Piping System. The piping system, including dosing equipment and distributor, shall be designed to provide capacity for the peak design rate of flow, including recirculation.

E. Media

1. Quality

a. The media may be crushed rock, slag, or specially manufactured material. The media shall be durable, resistant to spalling or flaking and insoluble in sewage. The top 18 inches (46 centimeters) shall have a loss by the 20-cycle, sodium sulfate soundness test of not more than 10 percent. The balance is to pass a ten-cycle test using the same criteria. Slag media shall be free from iron.

b. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalies, organic compounds, and fungus and biological attack. Such media shall be structurally capable of supporting a man's weight or a suitable access walkway shall be provided to allow for distributor maintenance.

2. Depth. The filter design shall provide for a depth of:

a. not less than 5 feet (1.5 meters) above the underdrains, but not more than 10 feet (3 meters) when rock or slag media is used in the filters.

b. not less than 10 feet (3 meters) above the underdrains to provide adequate contact time with the wastewater, but not more than 30 feet (9 meters) unless additional structural construction and aeration are provided, when manufactured media is used in the filters.

3. Size and Grading of Media

a. Rock, Slag and Similar Media

(1) Rock, slag, and similar media shall not contain more than 5 percent by weight of pieces whose longest dimension is three times the least dimension.

(2) Media shall be free from thin, elongated and flat pieces, dust, clay, sand or fine material and shall conform to the size and grading when mechanically graded over vibrating screens with square openings, as shown in Table R317-3-7.1(E)(3(a)(2).

b. Manufactured Media. The applicant must evaluate suitability of manufactured media on the basis of experience with installations handling similar wastes and loadings.

c. Handling and Placing of Media. Material delivered to the filter site shall be stored on wood-planked or other approved clean, hard-surfaced areas. All material shall be rehandled at the filter site and no material shall be dumped directly into the filter. Crushed rock, slag and similar media shall be washed and rescreened or forked at the filter site to remove all fines. Such material shall be placed by hand to a depth of 12 inches (30 centimeters) above the tile underdrains. The remainder of material may be placed by means of belt conveyors or equally effective methods approved by the design engineer. All material shall be carefully placed so as not to damage the underdrains. Manufactured media shall be handled and placed as approved by the engineer. Trucks, tractors, and other heavy equipment shall not be driven over the filter during or after construction.

F. Underdrain System

1. Arrangement. Underdrains with semicircular inverts or equivalent should be provided and the underdrainage system shall cover the entire floor of the filter. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter.

2. Hydraulic Capacity and Ventilation.

a. The underdrains shall have a minimum slope of 1 percent. Effluent channels shall be designed to produce a minimum velocity of two (2) feet per second (0.61 meters per second) at average daily rates of application to the filter.

b. The underdrainage system, effluent channels, and effluent pipe shall be designed to permit a free passage of air preventing septicity within the filter. The size of drains, channels, and pipe should be such that not more than 50 percent of their cross-sectional area will be submerged under the design peak hydraulic loading, including proposed or possible future recirculated flows. Forced air ventilation must be provided for deep or covered filters using manufactured media. The design of filters should be compatible for the installation of odor control equipment such as covers, forced air ventilation, scrubber, etc., as a retrofit.

3. Flushing. The design should include means for flushing of the underdrains. In small filters, use of a peripheral head channel with vertical vents is acceptable for flushing purposes. Means or facilities of inspection of underdrainage should be provided.

G. Special Features

1. Flooding. Appropriate valves, sluice gates, or other structures shall be provided to enable flooding of filters comprised of rock or slag media.

2. Freeboard. A freeboard of not less than 4 feet (1.2 meters) should be provided for tall filters using manufactured media, to maximize the containment of windblown spray.

3. Maintenance. All distribution devices, underdrains, channels, and pipes shall be installed so that they may be properly maintained, flushed or drained.

4. Freeze Protection. When climatic conditions are expected to result in operational problems due to cold temperatures, the filters may be covered for protection against freezing; maintaining operation and treatment efficiencies.

5. Recirculation. The piping and pumping systems shall be designed for recirculation rates as required to achieve sufficient wetting of biofilm and the design efficiency.

6. Recirculation Measurement. Recirculation rate to the filters shall be measured using flow measurement and recording devices. Time lapse meters and pump head recording devices are acceptable for facilities treating less than 1 million gallons per day (3,785 cubic meters per day).

H. Rotary Distributor Seals. Mercury seals are not permitted. The design of the distributor support septum shall provide for convenient and easy seal replacement to assure continuity of operation.

I. Multi-Stage Filters. The foregoing standards in this rule also apply to all multi-stage filters.

J. Unit Sizing

1. Required volumes of rock or slag media filters shall be based upon the following equations: For Single or First stage of Trickling Filter: $E = 100 - ((100 / (3 + 2 (R/I))) + (0.4 x (W / V) - 10))$. For Second stage of Trickling Filter: $E = 100 x ((1 + (R_2 / I)) / (2 + (R_2 / I)))$ where, E = Efficiency, percent R = recirculated flow through trickling filter, mgd I = raw sewage flow, mgd W = pounds of BOD_5 per day in raw sewage V = volume of filter media in 1000 cubic feet R_2 = recirculated flow through second-stage trickling filter, mgd.

2. The required volume of media may be determined by pilot testing or use of any of the various empirical design equations that have been verified through actual full scale experience. Such calculations must be submitted if pilot testing

is not utilized. Pilot testing is recommended to verify performance predictions based upon the various design equations, particularly when significant amounts of industrial wastes are present.

3. Expected performance of filters packed with manufactured media shall be determined from documented full scale experience on similar installations or through actual use of a pilot plant on site.

K. Nitrification

1. Trickling filters may be used for nitrification. The design should be based as shown in Table R317-3-7.1(K)(1).

2. Nitrification is affected by variations in flow, loadings and temperature, and other factors. Therefore, the applicant must conduct pilot studies before developing the design criteria.

L. Design Safety Factors. Trickling filters are affected by diurnal load conditions. The volume of media determined from either pilot plant studies or use of acceptable design equations shall be based upon organic loading at the maximum design rate of flow rather than the average design rate of flow.

7.2. Activated Sludge

A. General. The activated sludge process and its several modifications may be used to accomplish varied degrees of removal of suspended solids, and reduction of carbonaceous and nitrogenous oxygen demand. The degree and consistency of treatment required, type of waste to be treated, proposed plant size, anticipated degree of operation and maintenance, and operating and capital costs determine the choice of the process to be used. The design shall provide for flexibility in operation. Plants over 1 million gallons per day (3,785 cubic meters per day) shall be designed to facilitate easy conversion to various operational modes. In severe climates, protection against freezing shall be provided to ensure continuity of operation and performance.

B. Aeration

1. Capacities and Permissible Loadings

a. The design of the aeration tank for any particular adaptation of the process shall be based on full scale experience at the plants receiving wastewater of similar characteristics under similar climatic conditions, pilot plant studies, or calculations based on process kinetics parameters reported in technical literature. The size of treatment plant, diurnal load variations, degree of treatment required, temperature, pH, and reactor dissolved oxygen when designing for nitrification, influence the design. Calculations using values differing substantially from those in the table shown below must reference actual operational data.

b. The applicant must substantiate capability of the aeration and clarification systems in the processes using mixed liquor suspended solids levels greater than 5,000 milligrams per liter.

c. The applicant shall use the values shown in Table R317-3-7.2(B)(1)(c) to determine the aeration tank capacities and permissible loadings for the several adaptations of the processes, when process design calculations are not submitted. These values are based on the average design rate of flow, and apply to plants receiving peak to average diurnal load ratios ranging from about 2:1 to 4:1.

2. Arrangement of Aeration Tanks

a. Dimensions. Effective mixing and utilization of air must be the basis of dimensions of each independent mixed liquor aeration tank or return sludge reaeration tank. Liquid depths should not be less than 10 feet (3 meters) or more than 30 feet (9 meters) unless the applicant justifies the need for shallower or deeper tanks.

b. Short-circuiting. The shape of the tank and the installation of aeration equipment should provide for positive control of short-circuiting through the aeration tank.

c. Number of Units. Total aeration tank volume shall be divided among two or more units, capable of independent operation, to meet applicable effluent limitations and reliability guidelines.

d. Inlets and Outlets. Inlets and outlets for each aeration tank unit shall be suitably equipped with valves, gates, stop plates, weirs, or other devices to permit controlling the flow to any unit and to maintain reasonable constant liquid level. The hydraulic properties of the system shall permit the maximum instantaneous hydraulic load to be carried with any single aeration tank unit out of service.

e. Conduits. Channels and pipes carrying liquids with solids in suspension shall be designed to maintain self-cleaning velocities or shall be agitated to keep such solids in suspension at all rates of flow within the design limits. Drains shall be installed in the aeration tank to drain segments or channels which are not being used due to alternate flow patterns.

f. Freeboard. All aeration tanks should have a freeboard of not less than 18 inches (46 centimeters). Additional freeboard or windbreak may be necessary to protect against freezing or windblown spray.

3. Aeration Requirements

a. Oxygen requirements must be calculated based on factors such as, maximum organic loading, degree of treatment, level of suspended solids concentration (mixed liquor) to be maintained, and uniformly maintaining a minimum dissolved oxygen concentration in the aeration tank, at all times, of two milligrams per liter.

b. When pilot plant or experimental data on oxygenation requirements are not available, the design oxygen requirements shall be calculated on the basis of:

(1) 1.2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (two kilograms 0_2 per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 4.6 pounds 0_2 per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification, and

(4) oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc.

c. Oxygen utilization should be maximized per unit power input. The aeration system should be designed to match the diurnal organic load variation while economizing on power input.

4. Diffused Air Systems

a. The design of the diffused air system to provide the oxygen requirements shall be done using data derived from pilot testing or an empirical approach.

b. Air requirements for a diffused air system may be determined by use of any of the recognized equations incorporating such factors as:

(1) tank depth;

(2) alpha factor of waste;

(3) beta factor of waste;

(4) certified aeration device transfer efficiency;

(5) minimum aeration tank dissolved oxygen concentrations;

(6) critical wastewater temperature; and

(7) altitude of plant.

c. In the absence of experimentally determined alpha and beta factors by an independent laboratory for the manufacturer or at the site, wastewater transfer efficiency shall be assumed to be 50 percent of clean water efficiency for plants treating

primarily (90 percent or greater) domestic sewage. Treatment plants where the waste contains higher percentages of industrial wastes shall use a correspondingly lower percentage of clean water efficiency and shall submit calculations to justify such a percentage.

d. The design air requirements shall be calculated on the basis of:

(1) 1,500 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (94 cubic meters per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2,000 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (125 cubic meters per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 5800 cubic feet per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (360 cubic meters per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification,

(4) corresponding air quantities for satisfaction of oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc., and

(5) air required for channels, pumps, aerobic digesters, or other uses.

e. The capacity of blowers or air compressors, particularly centrifugal blowers, must be calculated on the basis of air intake temperature of 40 degrees Centigrade (104 degrees Fahrenheit) or higher and the less than normal operating pressure. The capacity of drive motor must be calculated on the basis of air intake temperature of -30 degrees Centigrade (-22 degrees Fahrenheit) or less. The design must include means of controlling the rate of air delivery to prevent overheating or damage to the motor.

f. The blowers shall be provided in multiple units, so arranged and in such capacities as to meet the maximum air demand with the single largest unit out of service. The design shall also provide for varying the volume of air delivered in proportion to the load demand of the plant. Aeration equipment shall be easily adjustable in increments and shall maintain solids suspension within these limits.

g. Diffuser systems shall be capable of providing for the maximum design oxygen demand or 200 percent of the average design oxygen demand, whichever is larger. The air diffusion piping and diffuser system shall be capable of delivering normal air requirements with minimal friction losses.

h. Air piping systems should be designed such that total head loss from blower outlet (or silencer outlet where used) to the diffuser inlet does not exceed 0.5 pounds per square inch (0.04 kilogram per square centimeter) at average operating conditions.

i. The spacing of diffusers should be in accordance with the oxygen requirements through the length of the channel or tank, and should be designed to facilitate adjustment of their spacing without major revision to air header piping. Removable diffuser assemblies are recommended to minimize downtime of aeration tanks.

j. Individual assembly units of diffusers shall be equipped with control valves, preferably with indicator markings for throttling, or for complete shutoff. Diffusers in any single assembly shall have substantially uniform pressure loss.

k. Air filters shall be provided in numbers, arrangements, and capacities to furnish, at all times, an air supply sufficiently free from dust to prevent damage to blowers and clogging of the diffuser system used.

5. Mechanical Aeration Systems

a. Oxygen Transfer Performance. The mechanism and drive unit shall be designed for the expected conditions in the aeration tank in terms of the power performance. The mechanical aerator performance shall be verified by certified testing.

b. Design Requirements. The design requirements of a mechanical aeration system shall accomplish the following:

(1) Maintain a minimum of 2.0 milligrams per liter of dissolved oxygen in the mixed liquor at all times throughout the tank or basin;

(2) Maintain all biological solids in suspension;

(3) Meet maximum oxygen demand and maintain process performance with the largest unit out of service; and

(4) Provide for varying the amount of oxygen transferred in proportion to the load demand on the plant.

c. Winter Protection. Due to high heat loss and the nature of spray-induced agitation, the mechanism, as well as subsequent treatment units, shall be protected from freezing where extended cold weather conditions occur.

6. Return Sludge Equipment

a. Return Sludge Rate

(1) The minimum permissible return sludge rate of withdrawal from the final settling tank is a function of the concentration of suspended solids in the mixed liquor entering it, the sludge volume index of these solids, and the length of time these solids are retained in the settling tank. Since undue retention of solids in the final settling tanks may be deleterious to both the aeration and sedimentation phases of the activated sludge process, the rate of sludge return expressed as a percentage of the average design flow of sewage should be between the limits set forth in Table R317-3-7.2(B)(6)(a)(1).

(2) The rate of sludge return shall be varied by means of variable speed motors, drives, or timers (in plants designed for less than one million gallons per day - 3,785 cubic meters per day) to pump sludge at the above rates.

b. Return Sludge Pumps

(1) If motor driven return sludge pumps are used, the maximum return sludge capacity shall be with the largest pump out of service. A positive head should be provided on pump suctions. Pumps should have at least 3 inch (7.6 centimeters) suction and discharge openings.

(2) If air lifts are used for returning sludge from each settling tank hopper, no standby unit is required provided the design of the air lifts are such to facilitate their rapid and easy cleaning and provided standby air lifts are provided. Air lifts should be at least 3 inches (7.6 centimeters) in diameter.

c. Return Sludge Piping. Discharge piping shall not be less than 4 inches (10 centimeters) in diameter, and should be designed to maintain a velocity of not less than two (2) feet per second (0.61 meters per second) when return sludge facilities are operating at normal return sludge rates. Sight glasses, sampling ports and rate of flow controllers for return activated sludge flow from each settling tank hopper shall be provided.

7. Waste Sludge Facilities

a. The design of waste sludge control facilities should be based on a logically developed solids mass balance at the maximum design flow. Otherwise, a maximum capacity of not less than 25 percent of the average design flow shall be provided, and function satisfactorily at rates of 0.5 percent of average sewage flow or a minimum of 10 gallons per minute (0.63 liters per second), whichever is larger.

b. Sight glasses, sampling ports and rate of flow controllers for waste activated sludge flow shall be provided.

c. Waste sludge may be discharged to the concentration or thickening tank, primary settling tank, sludge digestion tank, vacuum filters, other thickening equipment, or any practical combination of these units.

7.3. Flow Measurement. Instrumentation should be provided in all plants for indicating flow rates of raw sewage or primary effluent, return sludge, and air to each tank unit. For plants designed for the average design rate of flow of 1 million

gallons per day (3,785 cubic meters per day) or more, these devices should total, record, and indicate the rate of flow. Where the design provides for all return sludge to be mixed with the raw sewage (or primary effluent) at one location, then the mixed liquor flow rate to each aeration unit should be measured.

7.4. Other Biological Systems. The executive secretary may consider and approve new biological treatment processes with promising applicability in wastewater treatment. The approval will be based on the required engineering data for new process evaluation as provided in this rule.

7.5. Packaged Plants. The executive secretary may consider and approve packaged biological treatment plants only when there are no other and appropriate alternatives for waste treatment. These type of plants shall be designed for handling large flow variations and to meet all requirements contained in this rule. The applicant must consider the need for close attention and competent operating supervision, including routine laboratory control, when proposing a packaged plant.

R317-3-8. Disinfection.

8.1. General

A. All wastewaters containing pathogens or coliform bacteria must be disinfected before discharge to a water course. The disinfection procedures must consider any effect on the natural aquatic habitat and biota of the receiving water course. Effectiveness of disinfection also varies with BOD_5 and suspended solids in the effluent. If chlorination is utilized, it may be necessary to dechlorinate if the residual chlorine level would otherwise impair the receiving water course. The applicant must submit justification to the executive secretary for the determination of the acceptability of any disinfection system other than chlorination or ultraviolet irradiation.

B. If effluent to be discharged meets applicable bacteriologic standards before disinfection, the executive secretary may waive the disinfection process. However, all plants must have an ability to introduce a disinfectant in the effluent with proper reaction time before discharge. An example could be multi-celled (more than three cells) lagoon discharge following extended storage in excess of 150 days.

C. The disinfection method should be selected after due consideration of wastewater flow rates, application rates, demand rates and effects, pH of the wastewater, cost of equipment, availability, maintenance, reliability and safety problems.

D. Chlorine is the most commonly used chemical for wastewater disinfection. The forms most often used are liquid-gaseous chlorine and sodium and calcium hypochlorite. The executive secretary may review and accept other disinfection methods based on the information submitted.

8.2. Design

A. Capacity of System

1. Required disinfection capacity will vary, depending on the uses and points of application of the disinfectant, e.g., prechlorination, post chlorination, odor and process control uses, etc.

2. For disinfection of the wastewater before its discharge to a water course, the disinfection system capacity shall be sufficient to produce an effluent that will meet the coliform bacteria limits specified for that installation at all times. This condition must be attainable when maximum flow rates occur and during emergency conditions. For non-chemical disinfecting systems, an equivalent installed capacity shall be provided. Normal dosage requirements for disinfection will vary with the quality of effluent to be treated.

3. Duplicate disinfection systems shall be provided. Where only two units are installed, each shall be capable of feeding the expected maximum dosage rate.

4. Disinfection system equipment should be provided with necessary changeable parts to permit operation of system at initial anticipated flows at mid-scale on flow meters and other devices. Spare parts shall be provided for all disinfection equipment to replace parts which are subject to wear and breakage. Operation and maintenance data for all equipment shall be furnished.

5. Dosage control based on effluent flow rate should be provided because of the diurnal variations in the disinfectant demand of the wastewater. A residual disinfectant concentration must be maintained to insure the pathogen destruction, and subsequent reactivation, if any.

B. Contact Period

1. For a chlorination system, a minimum contact period is required after a thorough mixing of disinfectant with the effluent. The minimum contact period shall be greater of:

a. 30 minutes at the maximum design rate of flow (peak daily rate of flow) or the maximum pumping rate, or

b. 60 minutes at the average design rate of flow.

2. This contact period shall normally be provided in the contact tank. Contact period in pipeline or outfalls before discharge into a water course, may be credited towards the contact time if the effluent discharge point can be sampled.

C. Contact Chambers

1. The contact chambers must be designed such that:

a. effectiveness of disinfection is maximized;

b. accumulation of solids is minimized;

c. maintenance and cleaning is facilitated; and

d. short circuiting of flow is reduced to a practical minimum by installation of baffles.

2. Two tanks are required for all plants treating more than 1 million gallons per day (3,785 cubic meters per day). Means of removal of solids from the tank bottom shall be provided. Solids and drainage water must be returned to the head end of the plant. Skimming devices should be provided in all contact tanks. Covered tanks must have means of access for maintenance and cleaning.

3. Pipelines and outfall sewers may be acceptable as effective plug-flow contact chambers.

4. The applicant must incorporate all of the above process and design features in devices using other disinfecting methods.

D. Point of Application

1. The design shall provide for application of chlorine or other disinfectants to all fully treated, partially treated, or untreated wastewater discharged from the treatment plant. Other points of application shall be incorporated in the design for process considerations such as prechlorination, odor control, control of sludge bulking, etc. All application points shall be submerged below the wastewater surface.

2. Chlorine shall be positively mixed as rapidly as possible, with a complete mix being effected in three seconds. This may be accomplished by either the use of turbulent flow regime or a mechanical flash mixer.

8.3. Disinfection Methods

A. Chlorination (Liquid or Gaseous Chlorine)

1. Equipment

a. The installed capacity of a chlorine feed system shall be sufficient to provide a dosage of 25 milligrams per liter at the maximum design rate of flow. Procedures recommended by the Chlorine Institute and the Occupational Safety and Health Administration, the US Department of Labor, and succeeding organizations should be carefully followed in handling, installation, operation and maintenance of chlorination equipment. The requirements, procedures and recommendations from these organizations take precedence over the requirements stated herein, if more stringent.

b. Liquid chlorine lines from tank cars to evaporators shall be buried and installed in a conduit and shall not be exposed in below grade spaces. Systems shall be designed for the shortest possible pipe transportation of liquid chlorine. When chlorine cylinders are used, two scales, indicating and recording type,

should be used for weighing the cylinders in use. Each scale should be sized to accommodate the maximum number of cylinders required to deliver chlorine at the maximum chlorine feeding rate. Adequate means for supporting cylinders on the scales should be provided. Scales shall be of corrosion-resistant material.

c. Separate manifolds shall be provided for the bank of cylinders on each scale. The manifolds shall be properly valved so that one bank of cylinders may be replaced while chlorine is being withdrawn from the other bank of cylinders. Provision should be made for automatically changing the withdrawal of chlorine from one bank of cylinders to the second when the chlorine in the first bank of cylinders has been exhausted.

d. Gas chlorinators shall be of the solution feed type. The design capacity of evaporators must correspond to gaseous chlorine demand, where several cylinders or ton containers are manifolded to evaporate sufficient chlorine. Chlorine gas systems and piping should be of vacuum type.

2. Housing and Storage

a. Local, state and federal safety requirements, including fire code, shall be carefully followed in storing and handling of chlorine containers, cylinders or tank cars.

b. Gaseous chlorine and chlorination equipment rooms shall be isolated from other sections of the building by gas-tight partitions. Separation of the chlorine storage room and the chlorination equipment room is required for safety. All doors and rooms containing gas chlorination equipment and rooms used for chlorine gas storage should open only to the outside of the building, and all doors should be equipped with panic hardware and a viewing window. Multiple exits to the outside should be provided for each room in which chlorine gas is stored or used. Rooms housing chlorination equipment should be heated to 70 degrees Fahrenheit (21 degrees Centigrade), but never in excess of normal summer temperatures. Rooms containing chlorine cylinders from which chlorine is being withdrawn should be heated to above 60 degrees Fahrenheit (16 degrees Centigrade), but never above the temperature of the equipment room. Where chlorine containers are stored out of doors, the storage area shall be provided with a canopy. Similar precautions should be taken for tank cars. Also, if containers are stored out of doors, cylinders and containers must be allowed to reach room temperature before being placed in use. Floor drains from chlorine rooms must not be connected to floor drains from other rooms.

c. Chlorine rooms shall be at ground level, and should permit easy access to all equipment. The storage area should be separated from the feed area. Chlorination equipment should be situated as close to the application point as reasonably possible.

3. Ventilation and Heating

a. With chlorination systems, forced, mechanical ventilation shall be installed which will provide one complete air change per minute when the room is occupied.

b. When unoccupied, facilities in the ventilation system may be provided with means to reduce the number of air changes to twenty per hour to conserve energy. Whenever such a two-speed ventilation system is used, adequate provisions shall be made to insure that one complete air change per minute is provided when the room is occupied.

c. The entrance to the air exhaust duct from the room shall be near the floor and the point of discharge shall be so located as not to contaminate the air inlet to any buildings or inhabited areas.

d. Air inlets shall be so located as to provide cross ventilation with air and at such temperature that will not adversely affect the chlorination equipment. The vent hose from the chlorinator shall discharge to the outside atmosphere above grade or to the scrubbing system.

e. Switches for exhaust fans and cylinders shall be kept at essentially room temperature.

f. Chlorine scrubbing systems should be incorporated in the design of handling and storage areas where required by the state or local codes.

4. Ancillary Services

a. Water Supply. An ample supply of water meeting a minimum of secondary effluent quality, R317-1, Definitions and General Requirements, shall be available for operating the chlorinator. All in-plant use of effluent shall be taken from downstream of the sampling point for effluent quality monitoring and permit compliance. Where a booster pump is required, a standby booster pump shall be provided, and standby power shall be available.

b. Other Equipment. All electrical fixtures and drainage conduits in chlorination equipment rooms and chlorine storage rooms shall be gas-tight to prevent the spread of chlorine gas in the event of a leak.

5. Piping and Material. Piping systems should be as simple as possible, specifically selected and manufactured to be suitable for chlorine service, with a minimum number of joints. Piping should be well supported and protected against temperature extremes. Low pressure lines made of hard rubber, saran-lined, rubber-lined, polyethylene, polyvinyl chloride (PVC), or Uscolite materials are satisfactory for wet chlorine or aqueous solutions of chlorine.

6. Reliability. The design of the system must include the necessary provisions that will either prevent failures or allow immediate corrective action to be taken. Standby power, duplicate equipment and water storage shall be incorporated in the design to prevent interruption of feed, water supply and backup to power and equipment failures.

7. Residual Monitoring

a. An indicating and recording type residual chlorine analyzer using accepted test procedures shall be installed to monitor residual chlorine as required in the discharge permit.

b. Where dechlorination is used, residual chlorine analyzers shall be equipped with audible and visual alarms to indicate discharge of chlorine in the effluent.

8. Safety

a. At least two complete sets of respiratory air-pac protection equipment, meeting the requirements of the Occupational Safety and Health Administration (OSHA), shall be available where chlorine gas is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. Instructions for using the equipment shall be posted near the equipment. The equipment shall, using compressed air, have at least 30-minute capacity, and be compatible with the equipment used by the fire department responsible for the plant.

b. Where ton containers or tank cars are used, a leak repair kit approved by the Chlorine Institute shall be provided. Caustic soda solution reaction tanks for absorbing the contents of leaking ton containers must be provided where such containers are in use. The installation of automatic gas detection and related alarm equipment must be provided.

B. Ultraviolet Irradiation

1. The executive secretary will consider and approve the use of ultraviolet irradiation for disinfection of wastewater treatment plant effluent based on the information submitted. Effectiveness of this system depends upon shallowness of depth or contact volume at the point of application and relative absence of suspended solids.

a. The applicant must submit supporting data describing the proposed system and including such items as contact geometry between the ultraviolet light source and water, reliability, and suitability of the effluent for this process. Designs should be investigated for sound application of the fundamentals of UV disinfection theory.

b. The design shall be based on factors such as, plug-flow hydraulics, intimate contact with the UV light for a sufficient

period, short-circuiting, illumination. Tracer test results are helpful in assessment of hydraulic characteristics.

c. Materials of construction should be consistent with the wastewater and environment.

2. The design of ultraviolet disinfection systems shall be based on on-site testing and the following considerations:

a. Wastewater characteristics. Concentration of total suspended solids (TSS), calcium, magnesium, iron, etc., should be such that UV disinfection is effective. The wastewater should contain low levels of total suspended solids, preferably 20 milligrams per liter or below, and must transmit at least 50 percent of UV light through a wastewater depth of one (1) centimeter.

b. Layout

(1) Adequate space around the UV units to accommodate maintenance activities is required.

(2) Easy removal and replacement of lamps without the use of special tools by one man should be a feature of the equipment design.

(3) The ballasts should be arranged for ready and unhindered access for removal or replacement of any ballast without having a need to remove others.

(4) The layout design must provide adequate floor space for any separate components of the UV system in addition to the UV reactor itself, including requirements for power supply cabinets or cleaning equipment.

(5) Modular design with multiple units to allow uninterrupted service when performing maintenance must be specified.

3. Electrical Requirements

a. power consumption of this process alone should be separately metered.

b. UV lamps and ballasts must be properly matched. The proper matching of lamp and ballast will improve the lamps output and extend its useful life.

c. arrangements for shutting off banks of lamps within a single unit must be provided for lamp replacement or maintenance.

d. power controls should be provided for matching output of lamps with the rate of flow, and system maintenance by the plant staff.

e. minimum electrical standards of construction shall conform to the National Electrical Code, and other applicable codes and standards, consistent with the location or environment surrounding the UV unit and associated equipment.

4. Ventilation. Adequate ventilation to the structure housing the electrical components of the system must be provided to prevent failures from overheating.

5. Cleaning

a. The various means of chemical cleaning available must be evaluated. The evaluation must cover methods required for the unit to be drained; volume of cleansing agent required per cleaning; disposition of spent cleaning solution; manpower requirements to accomplish a cleaning cycle; capital costs of the cleaning and equipment; cleaner cost availability; and special storage and handling needs.

b. The system design must provide for complete draining and easy cleaning.

c. Ultrasonic cleaning must be considered for prevention of biofilm growth on non-illuminated quartz sleeves.

6. Monitoring and Instrumentation

i. Adequate staffing and resources to conduct the data collection and monitoring required for assessing performance must be provided.

ii. Each individual lamp output shall be measured and recorded.

8.4. Dechlorination

A. Sulfur Dioxide (SO_2)

1. Sulfur dioxide is most readily available in liquid (gaseous) form in ton containers similar to chlorine. Approximately, 1 milligram per liter of sulfur dioxide is required to dechlorinate 1 milligram per liter of chlorine residual (free or combined).

2. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is a rapid reaction and requires only a few seconds of contact. The design of sulfur dioxide system must be based on the following considerations:

a. Equipment. Generally sulfur dioxide shall be fed as a gas similar to chlorine gas, as described in R317-3-8. The sulfur dioxide header should be heated to prevent re-liquefaction.

b. Housing and Storage. These requirements are same as to those for chlorine, as described in R317-3-8.

c. Ventilation. These requirements are same as to those for chlorine, as described in R317-3-8.

d. Ancillary Services. These requirements are same as to those for chlorine, as described in R317-3-8.

e. Piping and Material. Pipe material (plastics) inside the sulfonator must be compatible with continuous exposure to sulfur dioxide gas.

f. Reliability. These requirements are same as to those for chlorine, as described in R317-3-8.

g. Residual Monitoring. Control is critical when sulfur dioxide is used as the dechlorinating agent because excess sulfur dioxide consumes excess dissolved oxygen in the wastewater or receiving waters. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is rapid, a few seconds at the most, so sampling can be performed immediately downstream of good mixing. The system should be monitored with a residual chlorine analyzer.

h. The design shall incorporate reaeration of the effluent to be in compliance with the dissolved oxygen requirement, if any, of the discharge permit.

i. Safety

(1) Adequate precautions must be taken for storing sulfur dioxide as it is a potentially hazardous chemical to store.

(2) Provide the same amount of air changes per hour as would be required for chlorine, together with a sulfur dioxide sensing and alarm detector.

B. Other Dechlorinating Agents. The executive secretary may review and approve other methods and chemicals for dechlorination based on the information submitted.

R317-3-9. Sludge Processing and Disposal.

9.1. Design Considerations

A. Process Selection

1. The selection of sludge handling and disposal methods must be based on the following considerations:

a. Energy requirements;

b. Efficiency of equipment for sludge thickening;

c. Complexity and costs of equipment and operations;

d. Staffing requirements;

e. Toxic effects of heavy metals and other substances on sludge stabilization and disposal alternatives;

f. Treatment and disposal of side-stream flows, such as digester and thickener supernatant;

g. Process considerations and good house keeping procedures for minimum waste stream generation;

h. A back-up method of sludge handling and disposal; and

i. The long term effects and regulatory requirements on methods of ultimate sludge disposal.

2. The selected process shall be designed to result in stabilized sludge prior to disposal. Significant reduction of odors, volatile solids and reduction or deactivation of pathogenic organisms can be achieved by chemical, physical, thermal or biological treatment processes; thereby reducing public health hazards and nuisance conditions.

B. Sludge Quantities

1. The sludge treatment system shall be designed to accommodate the quantities of sludge generated through the design period. Individual process sizing shall consider the sludge generation peaking factors appropriate for the size and type of facility, with allowance for: seasonal variations, industrial loads, and type of collection system. Reserve capacity in the form of off-line storage, standby units or use of extended hours of operation should be considered to handle peak sludge loads.

2. In plants treating less than one million gallons per day (3,785 cubic meters per day), sludge dewatering equipment may operate for less than 35 hours per week. Sludge processing equipment must be designed to operate efficiently over the range of sludge characteristics expected from the preceding unit process. The design engineer shall submit to the executive secretary, copies of design sizing calculations and relevant information to include:

a. average and maximum sludge quantities;

b. number and size of units;

c. equipment characteristics, conditioning chemical requirements and basic sizing parameters;

d. hours of operation;

e. expected capture efficiency;

f. expected percent solids yield.

C. Recycle loads. The sludge system as well as the liquid handling system shall be designed to take into consideration the recycle BOD5, suspended solids, nitrogen and phosphorus from the solids processing units. The magnitude of such recycle loads and resulting additional sludge will normally range from 5 to 30 percent of the influent loads. Solids balances to account for the additional solids must be calculated.

D. Sludge Storage

1. Design Considerations

a. When the plant design, except for the lagoons, does not include aerobic or anaerobic digesters, or gravity thickeners, etc., a minimum sludge storage for the entire sludge production over a two week period must be provided.

b. In-line storage by increasing mixed liquor solids concentration in aeration tanks or increasing retention in settling tanks is not permitted.

c. Aerated off-line sludge storage of not less than seven days shall be provided for oxidation ditch type activated sludge plants without a sludge digestion process.

2. Equipment Design. The sludge storage system should be equipped with mixing devices to prevent separation of solids and provide a more uniform feed to dewatering devices. Provision for adding lime, chlorine or air to prevent septicity and resulting odors is desirable. Decanting systems to provide thicker solids and flushing water to clean out tankage are necessary. Covering and odor control devices should be provided to minimize nuisance conditions.

9.2. Sludge Pumps and Piping

A. Design Basis

1. Pump Capacity. Capacity shall be adequate to cover the full range of solid concentrations and sludge production. Variable speed or other rate control systems should be provided for all sludge pumps. Maximum operating pressure should be calculated to account for the high friction factor when pumping thixotropic sludges in low velocity laminar ranges.

2. Duplicate Units. Duplicate units shall be provided where failure of one unit would seriously hamper plant operation. Pump suction and discharge manifolds should be interconnected so that one pump discharge can be used to backflush other suction piping.

3. Minimum Head. A minimum positive static head of 24 inches (61 cm) shall be provided at the suction side of centrifugal type pumps and is desirable for all types of sludge pumps. Maximum suction lift should not exceed 10 feet (3 meters) for plunger or diaphragm pumps.

4. Piping

a. Size. Sludge withdrawal piping shall have a minimum diameter of 8 inches (20 cm) for gravity withdrawal and 6 inches (15 cm) for pump suction and discharge lines. Where withdrawal is by gravity, available head shall be adequate to provide sufficient velocity in pipe; thereby preventing solids deposition in pipe.

b. Slope. Gravity flow piping should be laid on a uniform grade and alignment. The slope of gravity discharge lines should not be less than 3 percent.

c. Lining. Scum and primary sludge conveying piping should be lined with a low roughness material such as, glass lining, to reduce friction and to aid in cleaning and maintenance.

B. Equipment Features

1. Plunger type, screw feed type, rotary lobe type, recessed-impeller centrifugal type, progressive cavity type or other types of pumps with demonstrated solids handling capability shall be provided for handling raw sludge. Plunger pump backup for centrifugal pumps is recommended. The abrasive nature of sludges, especially those containing grit, must be considered in the selection of pump type and materials of construction.

2. Sludge grinders should be used where downstream process equipment, such as frame and plate presses, centrifuges, heat exchangers, sludge mixing devices or progressive cavity pumps, is susceptible to rag or trash build-up.

3. Valves. The piping system shall be equipped with isolation valves to allow for repairs and replacement of equipment or metering devices.

4. Piping Layout. Provisions should be made for cleaning, draining and flushing sludge piping. Flanges tees and crosses and cleanouts to allow rodding of suction line are desirable. Provision for back flushing with positive displacement pump discharge is desirable. Provision for cleaning by hot water, steam injection, in-line pigging or chemical degreasing should be considered in long lines containing raw sludge or scum.

C. Control Devices

1. Flow meters should be provided on all process and ancillary lines such as feed, withdrawal, gas, transfer, recirculation, hot water etc. Provision should be made for equipment isolation, cleaning and calibrating.

2. Sludge pumps used on intermittent withdrawal service should be equipped with variable timer equipment.

3. Quick-closing sampling valves shall be installed at the sludge pump, unless sludge sampling is provided separately elsewhere. The size of the valve and piping shall be at least 1 1/2 inches in diameter (3.8 centimeters).

9.3. Sludge Thickeners

1. The design of thickeners (gravity, dissolved-air flotation, centrifuge, and others) should consider the type and concentration of sludge, the sludge stabilization processes, the method of ultimate sludge disposal, chemical needs, and the cost of operation. The pumping rate and piping of the concentrated sludge should be selected such that anaerobic conditions are prevented.

2. No credit towards sludge storage or digestion, if any, in thickeners shall be permitted.

A. Gravity Thickening

1. Design Basis

a. Typical loading rates and resulting solids concentration for gravity thickening are as shown in Table R317-3-9.3(A)(1)(a).

b. Equipment and piping must be designed to deliver sufficient dilution water to gravity thickeners. Flow rate of dilution water shall be measured and recorded. Hydraulic loading to produce overflow rates of 400 to 800 gallons per day per square foot (16-33 cubic meter per day per square meter) shall be maintained to prevent septicity.

2. Equipment Features

a. Heavy duty scrapers capable of withstanding extra heavy torque loads should be provided.

b. Sidewater depths of 10-14 feet (3-4.2 meters) are recommended.

c. Ability to add chlorine solution should be provided to prevent septicity.

d. Tank covers and odor control systems should be considered depending on adjacent land use.

B. Co-Settling. Trickling filter or activated sludge may be returned to primary clarifiers for co-settling. If this method is utilized:

1. Peak design overflow rates for the primary clarifier shall not exceed 1,500 gallons per day per square foot (61 cubic meters per day per square meter), including recirculated sludge flow, and

2. Minimum sidewater depth in the primary clarifier must not be less than 12 feet (3.7 meters).

9.4. Anaerobic Digestion

A. Design Basis

1. The anaerobic digestion system shall provide for active digestion, supernatant separation, sludge concentration and storage. Heating and gas collection systems are required. Mixing systems for primary digesters shall be provided, and are recommended for secondary digesters.

2. Multiple digestion units shall be provided in all plants designed for more than 1 million gallons per day (3,7854 cubic meter per day) rate of flow. For plants designed for less than one million gallons per day (3,785 cubic meters per day), alternative methods of sludge stabilization and emergency storage must be available if only one unit is available.

3. The total digestion tank capacity should be determined by rational calculations based upon the following factors:

a. sludge characteristics - volume and percent solids,

b. the temperature to be maintained in the digesters,

c. the degree and extent of mixing in the digesters, and

d. the degree of volatile solids reduction desired.

4. Calculations shall be submitted to justify the basis of design. Otherwise, the following assumptions shall be used:

a. sludge characteristics - domestic wastewater sludge volume generated as shown in Table R317-3-9.4(A)(4)(a).

b. the temperature to be maintained in the digesters: 90 to 100 degrees Fahrenheit (32-38 degrees Centigrade).

c. the degree and extent of mixing in the digesters: 40 horsepower per million gallons (8 watts per cubic meter).

d. volatile solids in digested sludge: 50 percent.

5. Completely-mixed systems, mixed at an intensity such that digester contents are completely turned over every 30 minutes, may be loaded at a rate up to 120 pounds of volatile solids per 1,000 cubic feet of volume per day (1.92 kilograms per cubic meter per day) in the active digestion units. When grit removal facilities are not provided, the digester volume must be increased to accommodate grit accumulation.

6. Moderately mixed digestion systems, mixed by circulating sludge through an external heat exchanger, may be loaded at a rate up to 40 pounds of volatile solids per 1,000 cubic feet of volume per day (0.64 kilograms per cubic meter per day) in the active digestion units. This loading may be modified upward or downward depending upon the degree of mixing provided.

7. For those units intended to serve as supernatant separation tanks, the depth should be sufficient to allow for the formation of a reasonable depth of supernatant liquor. A minimum sidewater depth of 20 feet (6.1 meters) is recommended.

B. Tank Covers

1. All anaerobic digestion tanks shall be covered. Primary tanks may be equipped with gas-tight, fixed steel or concrete covers or floating steel covers made gas-tight by extended rims. Secondary tank covers may be of the fixed type or floating steel type, including gas storage type units.

2. Floating covers shall be equipped with a guide rail system to prevent tipping and lower-landing ridges, and cover restraints.

C. Sludge Inlets and Outlets

1. Multiple recirculation, withdrawal and return points, should be provided, to enhance flexible operation and effective mixing, unless mixing facilities are incorporated within the digester. The returns, in order to assist in scum breakup, should discharge above the liquid level and be located near the center of the tank.

2. Raw sludge feed to the digester should be through the sludge heater and recirculation return piping, or directly to the tank if internal mixing facilities are provided.

3. Sludge withdrawal to disposal should be from the bottom of the tank. This pipe should be interconnected with the recirculation piping, if such piping is provided, to increase versatility in mixing the tank contents. Additional alternative withdrawal lines should be provided.

D. Supernatant Withdrawal

1. Supernatant piping should not be less than 6 inches (15 centimeters) in diameter. Piping should be arranged so that withdrawal can be made from three or more levels in the digester. A positive, unvalved, vented overflow shall be provided with a drop leg for a liquid seal and downstream vent.

2. If a supernatant selector is provided, provisions shall be made for at least one other draw-off level, located in the supernatant zone of the tank, in addition to the unvalved emergency supernatant draw-off pipe. High pressure back-wash facilities shall be provided.

3. Multiple supernatant draw-offs should be provided for sampling at different levels. Sampling pipes must be at least 1 1/2 inches (3.8 centimeters) in diameter, and should terminate at a suitably-sized sampling sink or basin.

E. Sampling. Sampling hatches shall be provided in all tank covers with water seal tubes extending to beneath the liquid surface.

F. Gas Collection, Piping and Appurtenances

1. General. All portions of the gas system, including the space above the tank liquor, storage facilities and piping, shall be so designed that under normal operating conditions, including sludge withdrawal, the gas will be maintained under positive pressure. All enclosed areas where any gas leakage might occur shall be adequately ventilated.

2. Safety Equipment. All safety equipment shall be provided where gas is produced. Pressure and vacuum relief valves, flame traps, gas detectors, and automatic safety shut off valves, shall be provided.

3. Gas Piping and Condensate. Gas piping shall be of adequate diameter for gas flow rate and shall slope to condensate traps at low points. The use of float-controlled condensate traps is not permitted.

4. Gas Utilization Equipment.

a. Gas-fired boilers for heating digesters shall be located in a separate room not directly connected to the digester gallery. Gas lines to these units shall be provided with flame traps.

b. Dual fuel engines on major pumps or blowers, should be installed with possible recovery of exhaust and jacket cooling heat for use in heating digester or building spaces. An alternate system would consist of direct electric power generation. Gas cleaning and storage may be desirable.

5. Electrical Fixtures. Electrical fixtures and controls in enclosed places where hazardous gases may accumulate shall comply with the National Electrical Code for Class I, Division I Group D locations. Digester galleries must be isolated from normal operating areas to avoid an extension of the hazardous location.

6. Waste Gas.

a. Waste gas burners shall be readily accessible and should

be located at least 25 feet (7.6 meters) away from any plant structure if placed at ground level, or they may be located on the roof of the control building at a height of not less than three feet (0.9 meter) from the top of the roof.

b. All waste gas burners shall be equipped with automatic ignition, such as a pilot light or a device using a photoelectric cell sensor. Consideration should be given to the use of natural or propane gas to insure reliability of the pilot light.

c. Necessary approvals from the Utah Air Conservation Committee and its succeeding authorities, shall be obtained for burning any waste gas and any other emissions from the treatment plant.

7. Ventilation. Any underground enclosures connecting with digesters or containing sludge or gas piping or equipment shall be forced ventilated. The piping gallery for digesters should not be connected to other passages.

8. Metering. Gas meters, with by-pass, shall be provided to meter total and waste gas production.

G. Digester Heating

1. Insulation. Wherever possible, digesters should be constructed above ground water level and should be suitably insulated to minimize heat loss.

2. Heating Facilities

a. External Heating. Sludge may be heated by circulating the sludge through external heaters. Piping should be designed to provide for the preheating of feed sludge before introduction to the digesters, especially if sludge thickeners are not used, or if feed is a batch feed resulting in high intermittent feed rates. Provisions shall be made in the lay-out of the piping and valving to facilitate cleaning of these lines. Heat exchanger sludge piping should be sized for heat transfer requirements.

b. Other Heating Methods. The executive secretary may approve review other types of heating facilities based on the information submitted by the applicant.

3. Heating Capacity. Heating capacity sufficient to consistently maintain the design sludge temperature shall be provided. Where digester tank gas is used for sludge heating, an auxiliary fuel supply is required.

4. Hot Water Internal Heating Controls

a. A suitable automatic mixing valve shall be provided to temper the boiler water with return water so that the inlet water to the heat jacket can be held below a temperature at which caking will be accentuated. Manual control should also be provided by suitable by-pass valves.

b. The boiler should be provided with suitable automatic controls to maintain the boiler temperature at approximately 180 degrees Fahrenheit (82.2 degrees Centigrade), to minimize corrosion, and to shut off the main gas supply in the event of pilot burner or electrical failure, low boiler water level, or excessive temperatures.

c. Thermometers shall be provided to show temperatures of the sludge, hot water feed, hot water return, and boiler water.

H. Mixing Systems. Sludge mixing systems shall be gas recirculation, draft tube mixing, mechanical mixer or pump recirculation types. The mixing system should be designed such that routine maintenance can be performed without taking the digester out of service.

I. Operational Considerations

1. Piping Flexibility. Where two stage digestion is practiced, provision shall be made to feed and heat the secondary digester. Mixing systems should be installed in secondary digestion units.

2. Provision to pump secondary sludge to primary units for reseeding and extending sludge detention time is recommended.

3. When digested sludge is pumped to the dewatering unit, piping shall be laid out so as to prevent uncontrolled gravity flow.

4. Provisions to adjust pH and alkalinity by addition of chemicals shall be made.

J. Maintenance Features for draining, cleaning, and maintenance must be considered in the design of the digesters.

1. Slope. The tank bottom should slope to drain toward the withdrawal pipe. For tanks equipped with a suction mechanism for withdrawal of sludge, a bottom slope of 1:12 or greater is recommended. Where the sludge is to be removed by gravity alone, 1:4 slope is recommended.

2. Access Manholes. At least two 36 inch (91 centimeters) diameter access manholes should be provided in the top of the tank in addition to the gas dome. There should be stairways to reach the access manholes. A separate sidewall manhole shall be provided. The opening should be large enough to permit the use of mechanical equipment to remove grit and sand.

3. Safety. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the requirements stated herein, if more stringent, and should be incorporated in the design. Nonsparking tools, safety lights, rubber-soled shoes, safety harness, gas detectors for inflammable and toxic gases, and at least two self-contained breathing units shall be provided for emergency use.

9.5. Aerobic Digestion

A. General. Aerobic digestion may be used for stabilization of primary sludge, and activated or trickling filter sludge. Digestion may take place in single or multiple tanks designed to provide effective air mixing, reduction of the organic matter, supernatant separation, and sludge concentration under controlled conditions.

B. Tank Capacity. The digestion tank capacity shall be based on such factors as, quantity of sludge produced, sludge concentration and related characteristics, time of aeration, sludge temperature, etc.

1. Volatile Solids Loading. Volatile suspended solids loading shall not exceed 100 pounds per 1,000 cubic feet of volume per day (1.60 kilograms per cubic meter per day) in the digestion units.

2. Detention Time. The minimum detention time of 15 days shall be provided for aerobic digestion. The detention time may vary with sludge characteristics. Where sludge temperature is lower than 50 degrees Fahrenheit (10 degrees Centigrade) additional detention time should be considered. Covering of the aerobic digesters may be considered to prevent heat losses to atmosphere.

3. Multiple Units. Multiple tanks are required for plants designed to treat more than 1 million gallons per day (3,785 cubic meters per day). Adequate provision must be made for sludge handling and storage for the plants treating less than 1 million gallons per day (3,785 cubic meters per day). When multiple units are provided, ability to utilize them in serial operation is recommended.

4. Mixing and Air Requirements

a. Aerobic sludge digestion tanks shall be designed for effective mixing. Sufficient air shall be provided to keep the solids in suspension and maintain dissolved oxygen between 1 to 2 milligrams per liter.

b. A minimum air volume of 30 cubic feet per minute per 1,000 cubic feet of tank volume (0.51 liters per cubic meter per second) shall be provided with the largest blower out of service for the mixing and aeration requirements. For the diffused aeration systems, the nonclog type air diffusers are recommended, and shall be designed to permit continuity of service.

c. A minimum of 75 horsepower per million gallon of tank volume (15 watts per cubic meter) shall be provided for mechanical aeration systems. Mechanical aerators must be protected where freezing temperatures are expected. Submerged turbine units or floating surface aerators may be considered to allow for liquid level variation.

5. Supernatant Separation. Facilities shall be provided for effective separation and withdrawal of supernatant and for effective collection and removal of scum and grease. Multiple level decant withdrawal lines should be provided.

6. Foam Spray. Foam suppression spray water piping and nozzles should be provided.

9.6. Sludge Dewatering

A. Belt Filter Press

1. Design Basis

a. Hydraulic and solids loading rates, conditioning requirements, and performance shall be based on pilot unit performance or operational results on similar sludges.

b. Multiple units are required unless storage capacity or alternate dewatering methods are available to handle sludge during prolonged power outage.

c. In plants designed for 1 million gallons per day (3,785 cubic meters per day), the operational period should not usually exceed 35 hours per week which allows one shift operation with time for chemical makeup, cleanup and delays. In plants designed for over 1 million gallons per day (3,785 cubic meters per day), the operational period may approach 20 hours per day.

2. Equipment Features

a. The facility should provide for chemical storage, feed equipment, belt wash water, and filtrate return and for conveying and loading sludge cake onto transport vehicles.

b. Belt alignment and tensioning should be regulated automatically.

c. If a single unit is provided, standby equipment should be provided for the sludge feed pump, belt wash, and chemical feed.

d. Facilities or piping for filtrate and wash water sampling should be provided.

3. Operational Considerations. Good house keeping and maintenance features should include press housing, ventilation, safe and convenient access for cleanup and maintenance, floor drains, minimum splashing of filtrate or wash water, etc.

9.7. Sludge Drying Beds

A. Design Basis

1. The area of sludge drying beds is determined by factors such as, climatic conditions, the character and volume of the sludge to be dewatered, the method and schedule of sludge removal, and other methods of sludge disposal.

2. The applicant or the design engineer must submit the basis of design including calculations for review. When the basis of design is not submitted, the drying bed area shall be determined on the basis of 4 square feet per population equivalent (0.38 square meter per population equivalent) when the drying bed is the primary method of dewatering, and 2.0 square feet per population equivalent (0.19 square meter per population equivalent) if it is to be used as a backup dewatering unit. An increase of bed area by 25 percent is required for paved beds. Sludge storage or alternate dewatering methods should be considered for winter weather.

3. A ground water discharge permit may be required for beds without an impervious base. Hydraulic conductivity shall not be greater than 1 x 10-6 centimeters per second or as required for compliance with the provisions of R317-6 (Ground Water Quality Protection Regulations).

B. Design Features

1. Gravel. The lower course of gravel around the underdrains should be properly graded and not less than 12 inches (30.5 centimeters) in depth, extending at least 6 inches (15.2 centimeters) above the top of the underdrains. It is desirable to place this in two or more layers. The top layer of at least 3 inches (7.6 centimeters) must consist of gravel 1/8 inch to 1/4 inch (3.18 to 6.35 millimeters) in size. The remaining layer of gravel below the top 3-inch (7.6 centimeters) layer may be 3/4 to 1 inch (1.9 to 2.5 centimeters) in size.

2. Sand. The top course placed above the gravel should consist of at least 6 to 9 inches (15.2 to 22.9 centimeters) of clean coarse sand. The finished sand surface should be level.

3. Underdrains. Underdrains should be clay pipe or concrete drain tile at least 4 inches (10.2 centimeters) in diameter laid with open joints. Underdrains should be spaced not more than 20 feet (6.1 meters) apart. Underdrainage should be returned to the process with raw or settled sewage.

4. Partially Paved Type. The partially paved drying bed should be designed with consideration for the space requirement to operate mechanical equipment for removing the dried sludge. Paving must positively slope to the underdrains.

5. Containment Walls. Walls should be water-tight and extend 15 to 18 inches (38 to 46 centimeters) above and at least 6 inches (15 centimeters) below the surface of the drying bed. Outer walls should be curbed to prevent soil from washing onto the beds.

6. Sludge Removal. Not less than two beds should be provided and they should be arranged to facilitate sludge removal. Paved truck tracks should be provided for all percolation-type sludge beds.

7. Sludge Feed Line. The sludge pipe to the drying beds should terminate at least 12 inches (30.5 centimeters) above the floor surface and be so arranged that it will drain into the bed. Concrete splash blocks should be provided at sludge discharge points.

9.8. Other Sludge Treatment Methods. Other methods for sludge dewatering, treatment, and stabilization will be considered by the executive secretary based on such factors as the need, suitability of application and process, reliability and flexibility, etc.

R317-3-10. Lagoons.

10.1. Lagoon Siting

A. Distance from Habitation. A lagoon should be sited as far as practicable, with a minimum of 1/4 mile (0.4 kilometer), from areas developed for residential or commercial or institutional purposes or may be developed for such purposes within a foreseeable future. Site characteristics such as topography, prevailing wind direction, forests, etc., must be considered in siting the lagoon.

B. Prevailing Winds. The lagoon should be sited where the direction of local prevailing winds is towards uninhabited areas.

C. Surface Runoff. The lagoon should not be sited in watersheds receiving significant amounts of storm-water runoff. Storm-water runoff should be diverted around the lagoon and protect lagoon embankments from erosion.

D. Hydrology and hydrogeology. Close proximity to water supplies and other facilities subject to wastewater contamination should be avoided in siting the lagoon. A minimum separation of four (4) feet (1.2 meters) between the bottom of the lagoon and the maximum ground water elevation should be maintained.

E. Geology

1. The lagoon shall not be located in areas which may be subjected to karstification, i.e., sink holes or underground streams generally occurring in area underlain by porous limestone or dolomite or volcanic soil.

2. A minimum separation of 10 feet (3.0 meters) between the lagoon bottom and any bedrock formation is recommended.

10.2. Small Facilities. The executive secretary will review and approve the construction of a lagoon for a design rate of flow less than 25,000 gallons per day (95 cubic meters per day) only if:

A. there are no other alternatives for wastewater treatment and disposal available to the applicant;

B. there is no other appropriate technology for wastewater treatment and disposal except lagoon; and

C. the applicant has resources to satisfactorily operate and

maintain the lagoon.

10.3. Basis of Design. Design variables such as lagoon depth, number of units, detention time, and additional treatment units must be based on effluent standards for BOD_5, total suspended solids (TSS), E. coli, dissolved oxygen (DO), and pH.

A. Design for Discharging and Total Containment Lagoons

1. The design shall be based on BOD_5 loading ranging from 15 to 35 pounds per acre per day (16.8-39.2 kilograms per hectare per day).

2. The design for total containment lagoons shall be based on conservative estimates of precipitation, evaporation, seepage or percolation and inflow relevant to the site. A mass diagram showing each of the foregoing factors on a month-by-month basis, shall be prepared and submitted with the design and plans for review.

B. Design Depth. The minimum operating depth should be such that growth of aquatic plants is suppressed to prevent damage to the dikes, bottom, control structures, aeration equipment and other appurtenances.

1. Discharging or Total Containment Lagoons. The maximum water depth shall be 6 feet (1.8 meters) in primary cells. Greater depth in subsequent cells may be deeper than 6 feet provided that supplemental aeration or mixing is incorporated in the design. Minimum operating depth shall be three feet.

2. Aerated Lagoons. The design water depth should range from 10 to 15 feet (three to 4.5 meters). The type of the aeration equipment, waste strength and climatic conditions affect the selection of the design water depth.

3. Sludge Accumulation. The minimum depth of 18 inches (45 centimeters) for sludge accumulation shall be provided in primary cells of facultative lagoons.

C. Freeboard. The minimum freeboard shall be three (3) feet (1.0 meter). For small systems - less than 50,000 gallons per day (190 cubic meters per day), the minimum freeboard can be reduced to two (2) feet (0.6 meter).

D. Slope

1. Maximum Dike Slope. The inner and outer dike slopes shall not be steeper than 3 horizontal to 1 vertical (3:1).

2. Minimum Dike Slope. Inner dike slope shall not be flatter than 4 horizontal to 1 vertical (4:1). A flatter slope can be specified for larger installations because of wave action, but have the disadvantages of added shallow areas, that are conducive to emergent vegetation.

E. Seepage

1. The bottom of lagoons treating domestic sewage shall be no less than 12-inch (30 centimeters) in thickness, constructed in two six-inch (15 centimeters) lifts. The selection of the type of seals using soils, bentonite, or synthetic liners for the lagoon bottom shall be based on the design hydraulic conductivity, durability, and integrity of the proposed material.

2. Hydraulic conductivity of the lagoon bottom as constructed or installed, shall be such that it meets the requirements of ground water discharge permit issued under R317-6, (Ground Water Quality Protection rules). It shall not exceed 1.0×10^{-6} centimeters per second.

3. The seepage loss may vary with the thickness of the bottom seal and hydraulic head thereon. Detailed calculations on the determination of seepage loss shall be submitted with the design. It shall not exceed 6,500 gallons per acre per day (60.8 cubic meters per hectare per day).

4. Results of field and laboratory hydraulic conductivity tests, including a correlation between them, shall meet the design and ground water discharge permitting requirements, before the use of lagoon can be authorized.

5. Hydraulic conductivity for the lagoon where industrial waste is a significant component of sewage, shall be based on ground water protection criteria contained in R317-6 (Ground Water Quality Protection rules).

F. Detention time

1. Discharging Lagoons. Detention time in the lagoon shall be the greater, and exclusive of the capacity provided for sludge build-up, of:

a. 120 days based on winter flow and the maximum operating depth of the entire system; or

b. 60 days based on summer flow and peak monthly infiltration/inflow.

c. The detention time shall not be less than 150 days at the mean operating depth for effluent discharge without chlorination. In order to meet bacteriologic standards in such a case, at least 5 cells shall be provided. The detention time and organic loading rate shall depend on climatic or stream conditions.

2. Aerated Lagoons

a. The detention time shall be the greater of:

(1) 30 days minimum; or

(2) the value determined using the following formula: $E = (1/(1 + (2.3 \times K_1 \times t)))$ where: t = detention time, days; E = fraction of BOD_5 remaining in an aerated lagoon; K_1 = reaction coefficient, aerated lagoon, base 10. For normal domestic sewage, the K_1 value may be assumed to be 0.12 day^{-1} at 20 degrees Centigrade, and 0.06 day^{-1} at one degree Centigrade.

b. The reaction rate coefficient for domestic sewage which includes some industrial wastes must be determined experimentally for various conditions which might be encountered in the aerated lagoons. The reaction rate coefficient based on temperature used in the experimental data, shall be adjusted for the minimum sewage temperature.

G. Aeration Requirements for Aerated Lagoons

1. The design parameters for the aerated lagoon should be based on pilot testing or validated experimental data.

2. When pilot testing is not conducted, the design should be based on two pounds of oxygen input per pound of BOD_5 applied (two kilograms of oxygen input per kilogram of BOD_5 applied). However, it may vary with the degree of treatment, and the concentration of suspended solids to be maintained. A tapered mode of aeration is permitted based on applied BOD_5 to each cell.

3. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 milligrams per liter in the lagoon at all times such that their circles of influence meet.

a. Circle of Influence. It is that area in which return velocity is greater than 0.15 feet per second as indicated by the manufacturer's certified data. Table R317-3-10.3(G)(3)(a) may be used when the manufacturer's certified data is not available.

b. Freezing. Suitable protection from weather shall be provided for aerators and electrical controls.

H. Industrial Wastes. For industrial waste treatment using lagoon, the design parameters shall be based on the type and treatability of industrial wastes using biological processes. In some cases it may be necessary to pretreat industrial waste or combine with domestic sewage.

10.4. Lagoon Construction Details

A. Cell Shape. The shape of all cells should be such that there are no narrow or elongated portions. Round, square or rectangular lagoons with a length not exceeding three times the width are most desirable. No islands, peninsulas or coves are permitted. Dikes should be rounded at corners to minimize accumulations of floating materials. Common-wall dike construction, wherever possible, is strongly encouraged.

B. Multiple Units

1. At a minimum, the lagoon system shall consist of three cells of approximately equal capacity designed to facilitate both series and parallel operations.

2. The executive secretary may approve less than three cells on the basis of review of factors such as, the rate of flow,

the need, treatment reliability, etc.

3. All systems shall be designed with piping:

a. to permit isolation of any cell without affecting the transfer and discharge capabilities of the total system, and

b. to split the influent waste load to a minimum of two cells or all primary cells in the system.

C. Embankments and Dikes

1. Material. Dikes shall be constructed of relatively impervious material and compacted to no less than 90 percent Standard Proctor Density at 3 percent above the optimum moisture density to form a stable structure. The area where the embankment is to be placed shall be from vegetation and unstable organic material.

2. Top Width. The minimum dike width shall be 8 feet (2.4 meters) and shall permit access by maintenance vehicles.

D. Lagoon Bottom

1. Soil. Soil used in constructing the lagoon bottom (not including seal) and dike cores shall be incompressible and tight and compacted at a moisture content of 3 percent above the optimum water content to at least 90 percent Standard Proctor Density.

2. Uniformity. The lagoon bottom should be as level as possible at all points. Finished elevations shall not be more than three (3) inches (7.5 centimeters) from the average elevation of the bottom.

3. Prefilling. The lagoon should be prefilled to a level which protects the liner, prevents weed growth, reduces odor, and maintains moisture content of the seal. However, the dikes must be completely prepared before the introduction of any water.

E. Construction Quality Control and Assurance. A construction quality control and assurance plan showing frequency and type of testing for materials used in construction shall be submitted with the design for review and approval. Results of such testing, gradation, compaction, field permeability, etc., shall be submitted to the executive secretary.

F. Erosion Control

1. The site shall be protected from erosion. The design of control measures shall be based on factors, such as lagoon location and size, seal material, topography, prevailing winds, cost breakdown, application procedures, etc.

2. For aerated lagoons, the slopes and bottom shall be protected from erosion resulting from turbulence.

3. Exterior face of the dike slope shall be protected from erosion due to severe flooding of a water course.

4. Seeding. The outside surface of dikes shall have a cover layer of at least 4 inches (10 centimeters), of fertile topsoil to promote establishment of an adequate vegetative cover wherever riprap is not utilized. Prior to prefilling, adequate vegetation shall be established on dikes from the outside toe to 2 feet (0.6 meter) above the lagoon bottom on the interior as measured on the slope. Perennial-type, low-growing, native, spreading grasses that minimize erosion and can be mowed are most satisfactory for seeding on dikes. Alfalfa and other deep-rooted crops must not be used for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

5. Riprap or equivalent material shall be placed from 1 foot (0.3 meter) above the high water mark to two feet (0.6 meter) below the low water mark (measured on the vertical) for protection from severe wave action.

a. Riprap. The interior face of dikes must be protected from erosion by riprap or other equivalent methods of erosion control.

(1) Riprap layer shall be of durable, angular, sound and hard, field or quarry stones, and shall be free from seams, cracks and structural defects.

(2) The thickness of riprap layer shall be at least 8 inches (20 centimeters).

(3) Stones to be used in the riprap layer shall meet the following requirements:

(a) A minimum of 50 percent of stones by weight, shall be of sizes between two-thirds and one and one-half of the layer thickness;

(b) No more than ten percent of stones by weight, shall be of a size less than one-tenth of the layer thickness;

(c) The specific weight of stones must range between 2.5 and 2.82;

(d) Durability shall be tested in accordance with ASTM Standard C-535, as amended, and stones wearing in excess of 40 percent shall not be used.

(e) Stones shall be graded and manipulated in size so as to produce a regular surface of dense and stable mass. A stable foundation for the placed riprap shall be provided at the toe of the dike.

10.5. Influent Piping

A. Influent and Effluent Structures

1. All influent and effluent structures shall be located to minimize short-circuiting within lagoons, and to avoid blocking of lagoon circulation. Such structures must have protection against freezing or ice damage under winter conditions.

2. Inlets to the primary cells shall meet the following criteria:

a. Surcharging of upstream sewer from the inlet manhole is not permitted.

b. Multiple influent discharge points for primary cells of 20 acres (8 hectares) or larger should be provided to enhance the distribution of waste load in the cell.

c. Discharge shall be in the center of a round or a square cell, or at the third point farthest from the outlet structure in a rectangular cell, or at least 100 feet (30 meters) from the toe of the dike.

d. All aerated cells shall have an influent line which distributes the load within the mixing zone of the aeration equipment. Multiple inlets may be considered for a diffused aeration system.

e. Force mains shall be valved at the lagoon, and may terminate in a vertically or horizontally discharging section. The discharge end of the vertical pipe must be located no more than one foot above the lagoon bottom. Flow velocities in the discharge section entering the lagoon must not be in excess of two feet per second.

B. Influent Discharge Apron

1. The influent line shall discharge horizontally into a shallow, saucer-shaped, depression extending below the lagoon bottom not more than the diameter of the influent pipe plus 1 foot.

2. The end of the discharge line shall rest on a suitable concrete apron large enough to prevent the terminal influent velocity at the end of the apron from causing soil erosion. A 2-foot (0.6 meter) square apron shall be provided at the minimum.

C. Flow Measurement. Influent flow to the lagoon shall be continuously indicated and recorded. Flow measurement and recording equipment shall be weatherproof.

D. Level Gauges. Level gauges with clear markings shall be provided in:

1. each cell to measure and manually record the depth; and

2. the primary flow measurement device structure to indicate the depth or the rate of flow.

E. Manhole

1. A manhole or vented cleanout wye shall be installed prior to entrance of the influent line into the primary cell and shall be located close to the dike as topography permits. Its invert shall be at least 6 inches (15 centimeters) above the maximum operating level of the lagoon and provide sufficient hydraulic head without surcharging the manhole.

2. A manhole is required for small systems to house flow measurement device. For larger systems, flow measurement device and related instrumentation must be housed in a

headworks type structure.

F. Flow Distribution. Flow distribution structures shall be designed to effectively split hydraulic and organic loads equally to primary cells.

G. Material. The material for influent line to the lagoon should meet the requirements of material for underground sewer construction described in this rule. Unlined corrugated metal pipe is not permitted due to corrosion problems. The material selection shall be based on factors such as, wastewater characteristics, heavy external loadings, abrasion, soft foundations, etc.

10.6. Control Structures and Interconnecting Piping

A. Structure

1. As a minimum, control structures shall:

a. be accessible for maintenance and adjustment of controls;

b. be adequately ventilated for safety and to minimize corrosion;

c. be locked to discourage vandalism;

d. contain controls to permit water level and flow rate control, and complete shutoff;

e. be constructed of non-corrodible materials (metal-on-metal); and

f. be located to minimize short-circuiting within the cell and avoid freezing and ice damage.

2. Recommended devices to regulate water level are valves, slide tubes or dual slide gates. Regulators should be designed so that they can be preset to stop flows at any lagoon elevation.

B. Piping. All piping shall be of cast iron or other material for installation of underground piping. The piping shall be located along the bottom of the lagoon with the top of the pipe just below average elevation of the lagoon bottom. Pipes should be anchored and protected from erosion.

10.7. Effluent Discharge Piping

A. Submerged Takeoffs. For lagoons designed for shallow or variable depth operations, submerged takeoffs are required. Intakes shall be located a minimum of 10 feet (3.0 meters) from the toe of the dike and 2 feet (0.6 meter) from the seal, and shall employ vertical withdrawal.

B. Multi-level Takeoffs. For lagoons that are designed deeper than 10 feet (3 meters), enough to permit stratification of lagoon content, multiple takeoffs are required. There shall be a minimum of three withdrawal pipes at different elevations. Adequate structural support for takeoffs shall be provided.

C. Emergency Overflow. An emergency overflow should be provided to prevent overtopping of dikes. The hydraulic capacity for continuous discharge structures and piping shall allow for a minimum of 250 percent of the design flow of the system. The hydraulic capacity for controlled-discharge systems shall permit transfer of water at a minimum rate of six (6) inches (15 centimeters) of lagoon water depth per day at the available head.

10.8. Miscellaneous

A. Fencing. The lagoon area shall be enclosed with not less than 6 feet high chain link fence to prevent entering of livestock and to discourage trespassing. Fencing must not obstruct vehicle traffic on top of the dikes. A vehicle access gate of sufficient width to accommodate all maintenance equipment shall be provided. All access gates shall be provided with locks.

B. Access. An all-weather access road shall be provided to the lagoon site to allow year-round maintenance of the facility.

C. Warning Signs. Permanent signs shall be provided along the fence around the lagoon to designate the nature of the facility and advise against trespassing. At least one sign shall be provided on each side of the site and one for every 500 feet (150 meters) of its perimeter.

D. Service Building A service building for laboratory and maintenance equipment should be considered.

10.9. Industrial Waste Lagoons. The executive secretary will review the design of lagoons for treatment of industrial wastes on the basis of such factors as treatability, operability, reliability, ground water protection levels, water quality objectives, etc.

R317-3-11. Use, Land Application and Alternate Methods for Disposal of Treated Wastewater Effluents.

11.1. General. Design requirements for effluent disposal or water reuse of municipal wastewater treatment plant effluents shall comply with the requirements of this section. Administrative and approval requirements for these land application systems are found in R317-13 and R317-14 for water reuse and effluent disposal, respectively. Land application of effluent from industrial wastewater treatment plants shall comply with the requirements of R317-1-5.

11.2 Effluent Criteria. Land application of treated effluents is permitted following treatment if standards are met as defined in this section.

11.3 Submittal of Project Plan. If a person intends to use or provide for the use of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.2, a Project Plan must be submitted to and approved by the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2. The plan must contain the following information. At least items A, B, D and E should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the quantity, quality, and use of the treated wastewater to be delivered, the location of the site, an assessment of the direct hydrologic effects of the action, and how the requirements of this rule would be met. A nutrient management and agronomic uptake analysis may be required to document the proposed management of all nutrients.

B. A description of public notification and participation in the development of the Project Plan may be required.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between treated effluent distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to other entities for transmission, distribution and/or use, a copy of the contract covering how the requirements of this rule will be met.

E. Requirements for ground water discharge permits, underground injection control (U.I.C.) permits, surface water discharge permits, total maximum daily load (TMDL) or nutrient loading considerations, if required, shall be determined in accordance with R317-1, R317-2, R317-6, R317-7, R317-8.

11.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure. Internal building uses of treated effluent will not be allowed in individual, wholly-owned residences; and are only permitted in situations where maintenance access to the building's utilities is

strictly controlled and limited only to the services of a professional plumbing entity. Projects involving effluent reuse within a building must be approved by the local building code official.

3. Irrigation of food crops where the applied reuse water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 11.5.A below.

B. Required Treatment Processes

1.a. Treatment processes that are expected to produce effluent in which both the BOD and total suspended solids concentrations do not exceed secondary quality effluent limits as defined in R317-1-3.2.

b. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite, approved membrane processes or other approved filtration processes.

c. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, or other approved processes.

2. Other approved treatment processes in which any of the unit process functions of secondary treatment, filtration and disinfection may be combined, but still achieve the same secondary quality effluent limits as required above.

C. Water Quality Limits. The quality of treated effluent before use must meet the following standards. Testing methods and procedures shall be performed according to test procedures approved under R317-2-10, or as otherwise approved by the Executive Secretary. Water quality sampling requirements specified in this section shall apply to the point of compliance at all times during use of treated effluent.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by composite sampling conducted once per week. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median E. coli concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 9 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is recommended after disinfection and before the treated effluent goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds the maximum instantaneous limit for more than 5 minutes, or chlorine residual drops below the instantaneous required value for more than 5 minutes, where chlorine disinfection is used.

2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of treated effluent, if not sealed, must be at least 500 feet from any potable water well. The use should not result in a surface runoff and must not result in the creation of an unhealthy or nuisance condition, as determined by the local health department.

3. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require. When secondary residential irrigation systems are planned utilizing treated effluent in new subdivisions, it is recommended that a notification of the type of irrigation system and possible sources of irrigation waters be made on the deed for the property. Such notification could be made during the plat approval process.

11.5 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied treated effluent is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Treatment processes that are expected to produce effluent in which both the BOD and total suspended solids concentrations do not exceed secondary quality effluent limits as defined in R317-1-3.2.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to test procedures approved under R317-2-10, or as otherwise approved by the Executive Secretary. Water quality sampling requirements specified in this section shall apply to the point of compliance at all times during use of treated effluent.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by composite sampling conducted once per week. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l. Properly calibrated, continuous monitoring of turbidity may be substituted for the suspended solids testing.

3. The weekly median E. coli concentration shall not exceed 126 organisms/100 ml, as determined from daily grab

samples, and no sample shall exceed 500 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for E. coli, TSS and pH. The Water Quality Board may also allow a relaxation of lagoon effluent BOD and suspended solids concentrations, in accordance with R317-1-3.2.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 100 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of treated effluent, if not sealed, must be at least 500 feet from any potable water well. The use should not result in a surface runoff and must not result in the creation of an unhealthy or nuisance condition, as determined by the local health department.

3. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

11.6 Records. Records of volume and quality of treated wastewater used shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on treated effluent delivered may be submitted on the same form.

11.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

11.8 Treated Effluent Water Distribution Systems. Where treated effluent is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems and it is recommended that the accessible portions of existing reuse water distribution systems be retrofitted to comply with these rules. Requirements for irrigation systems proposed for conversion from use of secondary water to use with treated effluent will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Division of Water Quality prior to beginning construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Treated effluent main distribution lines parallel to potable (culinary) water lines should be installed in separate trenches. Treated effluent main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the treated effluent main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reuse water main.

b. Vertical Separation. At crossings of treated effluent main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, treated effluent line, and potable water line. A minimum 18 inches vertical separation between the treated effluent line and sewer line shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reuse water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the treated effluent line must cross above the potable water line, the vertical separation should be a minimum 18 inches. If the treated effluent line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the treated effluent line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the treated effluent line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in this Rule for protection of potable water lines and treated effluent lines. Existing pressure lines carrying treated effluent shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, treated effluent lines should be installed with a minimum depth of bury of three feet.

3. Treated Effluent Pipe Identification.

a. General. All new buried pipe within the public domain, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. A clearly labeled tracer location tape or wire shall be placed two feet above the top of treated effluent lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire buried length.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Treated Wastewater-Do Not Drink". The overall width of the tape shall be at least three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with treated effluent shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for treated effluent distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water" or "Treated Wastewater". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512 or equivalent color) and marked to differentiate treated effluent facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

7. Line Drains. All distribution pipes and sprinklers must have the capability to be completely drained.

8. Flow Measurement. Main distribution headers must

have flow measurement devices and pressure gages. All land applied flow must be totalized.

B. Storage. If storage or impoundment of treated effluent is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-3-11.5.D.2 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 11.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located as a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512 or equivalent color. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Treated Wastewater - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reuse water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and treated effluent system. If it is necessary to put potable water into the treated effluent distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the Division of Water Quality, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reuse water is used, or shall be otherwise protected from contact with the treated effluent. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on treated effluent systems in public areas and at individual residences are permitted for Type I water, with the following restrictions:

a. All exposed hose bib piping must be painted purple, Pantone 512 or equivalent color and,

b. Hose bibs shall be fitted with a valve having a non-permanently attachable operating handle. To discourage inappropriate casual use, it is recommended that each hose bib be posted with a warning label or sign, as detailed in R317 - 3.11.8.D.5, and/or placed in a lockable subsurface valve box in accordance with R317-3-11.8.A.5.

In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. To ensure the protection of public health, any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been used for conveying treated effluent may not be reused for conveying potable water.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains treated wastewater that is unsafe to drink.

6. Warning signs. Where treated effluent is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512 or equivalent color) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Treated Wastewater - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

7. Public Education Program. Where treated effluent is used in individual residential landscape or public landscape area irrigation systems, a public education program must be implemented prior to initial operation of the program and, as necessary, during operation of the system.

R317-3-12. Effluent Filtration.

12.1. Granular Media Filters. Granular media filters may be used as a tertiary treatment device for the removal of residual suspended solids from secondary effluents. A pretreatment process such as chemical coagulation and sedimentation or other acceptable process must precede the filter units, where effluent suspended solids requirements are less than 10 milligrams per liter, or where secondary effluent quality can be expected to fluctuate significantly, or where filters follow a treatment process and where significant amounts of algae will be present.

12.2. Design Considerations. The plant design should incorporate flow-equalization facilities to moderate filter influent quality and quantity. The selection of pumping equipment ahead of filter units should be designed to minimize shearing of floc particles.

A. Filter Types. Filters may be of the gravity or pressure type. Pressure filters shall be provided with ready and convenient access to the media for treatment or cleaning. Where greases or similar solids which result in filter plugging are expected, filters should be of the gravity type.

B. Filtration Rates. Filtration rates shall not exceed 5 gallons per minute per square foot. (3.4 liters per square meter per second) based on the maximum hydraulic flow rate applied to the filter units.

C. Number of Units. Total filter area shall be provided in two or more units, and the filtration rate shall be calculated on the total available filter area with one unit out of service.

D. Filter Backwash

1. Backwash Rate. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20 percent based on the media selected. The backwash system shall be capable of providing a variable backwash rate having a maximum of at least 20 gallons per minute per square foot, (13.6 liters per square meter per second) and a minimum backwash period of 10 minutes.

2. Backwash Pumps. Pumps for backwashing filter units shall be sized and interconnected to provide the required rate to any filter with the largest pump out of service. Filtered water should be used as the source of backwash water. Waste filter backwash shall be returned to the treatment process or otherwise adequately treated.

E. Filter Media

1. Selection. Selection of proper media size will depend on the rate of filtration rate, the type of pretreatment, filter configuration, and effluent quality objectives. In dual or multi-media filters, media size selection must consider compatibility among media.

2. Media Specifications. Table R317-3-12.2(E)(2) provides minimum media depths and the normally acceptable range of media sizes. The applicant has the responsibility for selection of media to meet specific conditions and treatment requirements relative to the project under consideration.

12.3. Filter Appurtenances. The filters shall be equipped with wash water troughs, surface wash or air scouring equipment, means of measurement and positive control of the backwash rate, equipment for measuring filter head loss, positive means of shutting off flow to a filter being backwashed, and filter influent and effluent sampling points. If automatic

controls are provided, there shall be a manual override for operating equipment, including each individual valve essential to the filter operation. The underdrain system shall be designed for uniform distribution of backwash water (and air if provided) without danger of clogging from solids in the backwash water. Provision shall be made to allow periodic chlorination of the filter influent or backwash water to control slime growths.

12.4. Reliability. Each filter unit shall be designed and installed so that there is ready and convenient access to all components and the media surface for inspection and maintenance without taking other units out of service. The need for enclosing filter units shall depend on expected extreme climatic conditions at the treatment plant site. As a minimum, all controls shall be protected from adverse process and climatic conditions. The structure housing filter controls and equipment shall be provided with adequate heating and ventilation equipment to minimize problems with excess humidity.

12.5. Backwash Surge Control. The rate of waste filter backwash water return to treatment units shall be controlled such that the rate does not exceed 15 percent of the design average daily flow rate to the treatment units. The hydraulic and organic loads from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service.

12.6. Backwash Water Storage. Total backwash water storage capacity provided in an effluent clearwell or surge tank or other unit shall equal or exceed the volume required for two complete backwash cycles. Additional storage capacity should be considered for operational flexibility.

12.7. Proprietary Equipment. Where proprietary filtration equipment, not conforming to the preceding requirements is proposed, data which supports the capacity of the equipment to meet effluent requirements under design conditions shall be submitted for review and approval by the executive secretary.

TABLE R317-3-2.3(D)(4).
Minimum Slopes

Sewer Size, inch (centimeter)	Minimum Slope, feet per feet or meter per meter
8 (20)	0.00334
9 (23)	0.00285
10 (25)	0.00248
12 (30)	0.00194
14 (36)	0.00158
15 (38)	0.00144
16 (41)	0.00132
18 (46)	0.00113
21 (53)	0.00092
24 (61)	0.00077
27 (69)	0.00066
30 (76)	0.00057
36 (91)	0.00045

TABLE R317-3-4.4(H)(1).
Painting

Service	Color
Sludge	Brown
Gas	Orange
Potable Water	Blue
Non-Potable Water	Blue with a 6-inch (15 centimeters) red band spaced 30 inches (76 centimeters) apart
Chlorine	Yellow
Compressed Air	Green
Sewage	Gray

TABLE R317-3-6.2(B)(3)(d).
Loadings for Final Settling Tanks
Following Activated Sludge Process

Process	Average Design Rate of Flow, million gallons per day (cubic meters per day)	Surface Loading, gallons per day per square foot (cubic meters per day per square meter)	Surface Loading, pounds per day per square foot (kilograms per day per square meter)
Contact Stabilization	0.5 (1,893) to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
	Greater than or equal to 1.5 (5,678)	500 (20.4) to 700 (28.5)	
Extended Aeration	Less than or equal to 0.5 (1,893)	200 (8.2) to 400 (16.3)	
	0.5 (1,893) to 1.5 (5,678)	300 (12.3) to 500 (20.4)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
Other than Contact Stabilization and Extended Aeration	Less than or equal to 0.5 (1,893)	400 (16.3) to 600 (24.5)	
	0.5 (1,893) to 1.5 (5,678)	500 (20.4) to 700 (28.5)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	600 (24.5) to 800 (32.6)	

TABLE R317-3-7.1(E)(3)(a)(2).
Media Grading

	Percent by Weight
Passing 4-1/2 inch (11.4 centimeters) screen	100
Retained on 3 inch (7.6 centimeters) screen	95 - 100
Retained on 2 inch (5.1 centimeters) screen	98

TABLE R317-3-7.1(K)(1).
Hydraulic and Organic Loadings
for Nitrification in Trickling Filters

Trickling Filter Configuration	Loadings
Rock or Slag Media Filters	
Hydraulic Loading	Less than or equal to 4 million gallons per acre per day, or less than or equal to 4 cubic meters per square meter per day
Organic Loading	Less than or equal to 25 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 0.4 kilograms BOD_5 per day per cubic meter

Deep Manufactured Media Filters		
Hydraulic Loading	Less than or equal to 25 million gallons per acre per day, or less than or equal to 25 cubic meters per square meter per day	
Organic Loading	Less than or equal to 100 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 1.6 kilograms BOD_5 per day per cubic meter	

TABLE R317-3-7.2(B)(1)(c)
Permissible Aeration Tank Capacities and Loadings

Process	Hydraulic Retention Time (HRT), hours	Solids Retention Time (SRT), days	Aeration Tank Loading, pounds of BOD_5 per day per 1000 cubic feet	Food:Mass (F:M) Ratio, pounds of BOD_5 per day per pound of MLVSS (2)	Mixed Liquor Suspended Solids (1) (MLSS) milligrams per liter
Conventional	4-8	4-8	20-40	0.2-0.4	1,500-4,000
Step Aeration					
Complete Mix					
Contact Stabilization	1-3 (4) 3-6 (5)	3-10	50 (3)	0.2-0.6	2,000-4,000
Extended Aeration, or Oxidation Ditch	24	30	10-12	0.05-0.1	2,000-4,000

Notes:
(1) Mixed Liquor Suspended Solids (MLSS) values are dependent upon the surface area provided for sedimentation and the rate of sludge return as well as the aeration process.
(2) Mixed Liquor Volatile Suspended Solids (MLVSS)
(3) Total Aeration capacity, includes both contact and reaeration capacities. Normally, the contact zone equals 30 to 35 percent of the total aeration capacity.
(4) Contact zone
(5) Reaeration zone

TABLE R317-3-7.2(B)(6)(a)(1).
Return Sludge Rate

Process	Q_R / Q, Percent
Standard Rate	15-75
Carbonaceous stage of separate stage nitrification	15-75
Step Aeration	15-75
Contact stabilization	50-150
Extended aeration	50-150
Nitrification stage of separate stage nitrification	50-200

TABLE R317-3-9.3(A)(1)(a).
Gravity Thickening

Type	Solids Loading Rate, pounds per day per square foot (kilograms per square meter per day)	Percent solids in thickened sludge
Primary sludge	20-30 (98-146)	8-10
Trickling filter sludge	8-10 (39-49)	7-9
Activated sludge	4-8 (20-49)	2.5-3
Combined primary and trickling filter sludges	10-12 (49-59)	7-9
Combined primary and activated sludges	6-10 (29-49)	3-6

TABLE R317-3-9.4(A)(4)(a).
Sludge Volume Generated

Type of Plant	cubic feet per Population Equivalent (P.E.) or cubic meters per Population Equivalent (P.E.)
Trickling Filter	5 (0.14)
Activated Sludge	6 (0.17)

TABLE R317-3-10.3(G)(3)(a).
Circle of Influence

Nameplate Horsepower	Radius, Feet
5	35
10-25	50
40-60	50-100
75	60-100
100	100

TABLE R317-3-12.2(E)(2).
Media Depths and Size

Media Material	Single Media	Multi-Media Two	Multi-Media Three
Anthracite:			
Minimum Depth, inches		20	20
Effective Size, millimeters		1-2	1-2
Sand:			
Minimum Depth, inches	48	12	10
Effective Size, millimeters	1-4	0.5-1	0.6-0.8
Garnet or Similar Material:			
Minimum Depth, inches			2
Effective Size, millimeters			0.3-0.6

Uniformity Coefficient shall be less than or equal to 1.7

KEY: wastewater, water quality, water pollution
February 4, 2008 19-5
Notice of Continuation October 2, 2007 19-5-104
40 CFR 503

R317. Environmental Quality, Water Quality.
R317-13. Approvals and Permits for a Water Reuse Project.
R317-13-1. Definitions.

1.1 "Executive Secretary" means the executive secretary of the Utah Water Quality Board.

1.2 "Domestic wastewater" means a combination of the liquid or water-carried wastes from structures with installed plumbing facilities and industrial establishments, and any groundwater, surface water, and storm water that is present with the waste.

1.3 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

1.4 "Public agency" means a public agency as defined by Utah Code Annotated Section 11-13-103 that:

A. owns or operates a POTW;

B. collects and transports domestic wastewater;

C. holds legal title to a water right;

D. is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;

E. is a water supplier; or

F. sells wholesale or retail water.

1.5 "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Utah Code Annotated Section 19-5-104.

1.6 "Water reuse project" means a project for the reuse of treated domestic wastewater that requires approval by the Utah Water Quality Board in accordance with Utah Code Annotated Sections 19-5-104 and 73-3c-301, and the state engineer under Section 73-3c-302.

1.7 "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

R317-13-2. Administrative Requirements.

2.1 General. This rule is issued for water reuse projects.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Sections 19-5-104(1)(r) and Utah Code Annotated Section 73-3c-301. Violation of a construction permit, operating permit, or approval including compliance with the conditions thereof, or beginning of construction, or modification without the executive secretary's approval, is subject to the penalties provided in Utah Code Annotated Section 19-5-115.

2.3 Applicability. This rule applies to public agencies that propose a water reuse project.

2.4 Approvals and Permits Required.

A. Approval of Water Reuse Projects. The Executive Secretary may approve, approve in part, approve with conditions or deny, in writing, an application for the reuse of treated domestic wastewater.

B. Construction Permit Requirements. Water reuse projects involving the construction, installation, modification or operation of any collection system, treatment works, reuse water distribution system or part thereof, or any extension or addition thereto shall obtain a construction permit in accordance with this section and the requirements of R317-3, "Design Requirements for Wastewater Collection, Treatment and Disposal Systems", prior to construction.

C. Operating Permit for a water reuse project. If a water reuse project is approved, the Executive Secretary shall issue an operating permit consistent with any construction permit and the rules of the Board.

D. Limitations. The issuance of an approval, construction permit, or operating permit does not relieve the public agency of the obligation to obtain other approvals and permits, i.e., ground water discharge permit or permits and approvals from other agencies which may have jurisdiction over the project.

R317-13-3. Reuse Project Application and Technical Requirements.

3.1 Specific application requirements for a water reuse project. If a public agency intends to reuse or provide for the reuse of treated domestic wastewater for any purpose, application shall be made to the Executive Secretary as required in this rule and R317-3-11, prior to construction or operation of the water reuse project.

3.2 Technical requirements for a water reuse project. The design and operation of any water reuse utilizing treated domestic wastewater shall be in accordance with the applicable requirements of R317-3-11.

KEY: water pollution, waste disposal, industrial waste, effluent standards
February 4, 2008 19-5

R317. Environmental Quality, Water Quality.
R317-14. Approval of Change in Point of Discharge of POTW.
R317-14-1. Definitions.

1.1 "Executive Secretary" means the executive secretary of the Utah Water Quality Board.

1.2 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

R317-14-2. Administrative Requirements.

2.1 General. This rule is issued for changes in point of discharge from a POTW.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Section 73-3c-304.

2.3 Approval Required. A POTW shall apply to and receive approval from the Executive Secretary prior to any change in the point of discharge of water from the POTW. The Executive Secretary shall issue an approval if it is determined that the change is necessary:

A. for treatment purposes;

B. to enhance environmental quality;

C. to protect public health, safety, or welfare; or

D. to comply with rules of the Board or the POTW's discharge permit.

2.4 Before approving any change in the point of discharge from a POTW, the Executive Secretary shall consult with the State Engineer.

KEY: wastewater, POTW, discharge
February 4, 2008 19-5

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-6. Emergency Medical Services Competitive Grants Program Rules.
R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide guidelines for the equitable distribution of competitive grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

R426-6-3. Eligibility.

(1) Competitive grants are available for use specifically related to the provision of emergency medical services.

(2) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(3) Only the following entities are eligible for competitive grant funds:

(a) licensed EMS agencies;

(b) designated EMS agencies; and

(c) political subdivisions of Utah state or local governments that are seeking grants to provide for initial training to become licensed or designated EMS agencies; and

(d) non-profit entities that are seeking grants to provide for initial training to become licensed or designated EMS agencies.

(4) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-6-4. Grant Implementation.

In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, copies of grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grants subcommittee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.

(7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS problems.

(8) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county prioritization;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.

(10) The Department may withhold payment of grant funds to a grantee that is six months or more in arrears in payments owed to the Department until the overdue payments are paid in full.

R426-6-6. Interim or Emergency Grant Awards.

(1) The Grants Review Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Review Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Review Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
February 7, 2008 **26-8a**
Notice of Continuation October 31, 2007

R432. Health, Health Systems Improvement, Licensing.
R432-16. Hospice Inpatient Facility Construction.
R432-16-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-16-2. Purpose.

The purpose of this rule is to promote quality of life in a home-like setting through the establishment and enforcement of construction standards for hospice inpatient facilities.

R432-16-3. Definitions.

(1) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or a licensed hospice unit in an existing health care facility.

(2) "Small Hospice Inpatient Facility" means a hospice facility capable of housing two to eight patients.

(3) "Large Hospice Inpatient Facility" means a hospice facility capable of housing nine or more patients.

R432-16-4. Hospice Unit.

(1) Each Hospice Unit is an area identified by the Licensee within a licensed health care facility and consists of at least two resident beds, resident care spaces, and service spaces.

(2) If licensed health care facilities share spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each health care facility served.

(3) A hospice inpatient facility operated in conjunction with another licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more health care facilities.

(4) Facility service areas shall be accessible from common areas without compromising resident privacy.

R432-16-5. General Design Requirements.

R432-4-1 through R432-4-22 apply with the following modifications.

(1) All public, common, and at least 10 percent of resident toilet rooms and bathrooms shall have fixtures that comply with Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993).

(2) These rooms shall be wheelchair accessible with wheelchair turning space within the rooms.

(3) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-16-6. Administrative Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) In large hospice inpatient facilities, an administrative office of sufficient size to store records and equipment.

(b) In small hospice inpatient facilities, an area may be designated for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings.

(3) A large hospice inpatient facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-16-7. Resident Rooms.

(1) Maximum room occupancy is two residents.

(2) Minimum room areas for new construction (exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules) shall be 120 square feet in single bed rooms and 100 square feet per bed in multiple-bed room. Existing buildings or spaces being licensed as a hospice shall have a minimum of 80 square feet of clear floor area per bed in multiple-bed areas and 100 square feet of clear floor area in single-bed rooms.

(3) In multiple-bed rooms, clearance shall allow for the movement of beds and equipment without disturbing residents. The dimensions and arrangement of rooms shall be such that there is a minimum of three feet clearance at least at one side, the foot, and between another bed.

(4) A nurse call system shall be provided. Each bed shall be provided with a call device. Two call devices serving adjacent beds may be served by one calling station. Calls in a large inpatient hospice facility shall also activate a visible signal in the corridor at the resident's door.

(5) A nurse emergency call device shall be provided at each inpatient toilet, bath, and shower room. The call device shall be accessible to a collapsed resident lying on the floor. Inclusion of a pull cord will satisfy this standard. The emergency call system shall be designed so that a signal activated at a resident's calling station will initiate a visible and audible signal distinct from the regular nurse call system and can be turned off only at the resident calling station. The signal shall activate an annunciator panel at the nurse station or other location appropriate to ensure immediate nurse notification. Emergency calls in a large hospice inpatient facility shall also activate a visible signal in the corridor at the resident's door.

(6) Each resident shall have access to a toilet room without having to enter the corridor area. One toilet room shall serve not more than four beds and no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The toilet room door shall swing outward.

(7) At least one single-bed room with a private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each eight beds, or fraction thereof, in a hospice facility.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or hand washing sink shall be provided in the patient room.

(b) Ventilation shall be in accordance with Table 8.1 of Section 8 of the Guidelines for Construction and Equipment of Hospital and Medical Facilities, 2001 edition, which is adopted and incorporated by reference.

(8) Each resident room intended for 24-hour occupancy, shall have an operable window open to the building exterior or to a court which is open to the sky.

(9) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned at 70 inches to hang full length garments.

(10) Visual privacy shall be provided for each resident in multiple-bed rooms. Design for privacy shall not restrict resident access to the toilet, lavatory, or room entrance.

R432-16-8. Service Requirements.

(1) A nurse station shall be provided and have space for charting, storage, medication security, and administrative activities.

(2) Toilet room(s) with hand washing facilities for staff shall be provided and may be unisex.

(3) Hand washing facilities shall be located immediately adjacent to the nursing station and the drug distribution station.

(4) Provisions shall be made for 24-hour distribution of medications by providing a medicine preparation room or a self-contained medicine dispensing unit. If a medical cart is used it shall be under visual control of staff.

(5) A clean workroom or clean holding room shall be provided for resident care items.

(a) The clean work room shall contain a counter, hand washing facilities and storage facilities.

(b) The work counter and hand washing facilities may be omitted in rooms used only for storage and holding, as part of

a larger system for distribution of clean and sterile supply materials.

(6) A soiled workroom shall be provided.

(a) The soiled workroom shall contain a clinical sink, a sink equipped for hand washing, a work counter, waste receptacles, and a linen receptacle.

(b) Hand washing sinks, clinical sinks, and work counters may be omitted in rooms used only for temporary holding of soiled, bagged material.

(c) In small hospice inpatient facilities, accommodations shall be available for cleaning and sanitizing patient service items.

(7) Clean linen shall be stored in a separate closet or room. If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited. Clean linen may be stored in the clean work room or a clean holding room.

(8) Resident bathing facilities shall be provided in each hospice unit at a ratio of one bathing facility for each eight beds, or fraction thereof, not otherwise served by bathing facilities within individual resident rooms.

(a) Each resident bathtub or shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(b) A toilet and hand sink shall be provided at each common bathing area.

(9) An equipment storage room with a minimum area of five square feet for each licensed bed, but no less than 30 square feet, for portable equipment shall be provided.

(10) In small hospice inpatient facilities, accommodation shall be made for storage of portable equipment.

R432-16-9. Resident Support Areas.

(1) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents. The total area set aside for dining, resident lounges, and recreation area shall be at least 35 square feet per bed with a minimum total area of at least 225 square feet. At least 20 square feet per bed shall be available for dining.

(2) There shall be a general purpose room with a minimum area of 100 square feet. It shall accommodate family gatherings and shall be equipped with a table, comfortable chairs and incandescent lighting. In small hospice inpatient facilities, this room may be omitted if the required living area includes an enclosed lounge.

(3) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

R432-16-10. General Services.

(1) Large inpatient hospice facilities shall have linen services that comply with R432-4-24(3).

(2) Small inpatient hospice facilities shall have space and equipment to store and process clean and soiled linen as required for patient care.

(3) There shall be one housekeeping room for each hospice unit. There shall be an exhaust for this room that exhausts air to the outside.

(4) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-16-11. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) Storage area for food supplies, including a cold storage area for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) Food preparation area;

(c) An area to serve and distribute resident meals;

(d) An area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) A storage area for waste located next to an outside facility exit for direct pickup;

(f) An area for meal planning.

R432-16-12. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques required by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-16-13. Details and Finishes.

Details and finishes shall comply with the following:

(1) Corridor handrails shall be provided and shall comply with ADAAG.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADAAG.

(4) All partition and all floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

(5) Floor materials shall be easily cleanable.

(6) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(7) In areas subject to frequent wet-cleaning, the floor materials shall be sealed to prevent contamination by germicidal cleaning solutions.

(8) Floors and wall bases of kitchens, toilet rooms, bath rooms, and housekeeping rooms shall be homogeneous or joints shall be tightly sealed. Bases shall be integrated with the floor and coved.

(9) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(10) Finish, trim, floor, and wall construction in food preparation areas shall be free of insect and rodent harboring spaces.

(11) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to prevent entry of pests.

(12) Carpet and padding shall be stretched taut and be free of loose edges.

(13) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be cleanable.

(14) Finished ceilings are not required in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire resistive purposes.

(15) Finished ceilings shall be provided in areas where dust fallout might occur.

TABLE 1

Sound Transmission Limitations
in Hospice Care Facilities

Airborne Sound Transmissions
Class (STC)(a)

Class (IIC) (b)	Partitions	Floors
(Residents') room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-16-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Insulation containing any asbestos is prohibited.

(4) Air conditioning, heating, and ventilating systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may not be used.

(d) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air shall be recirculated into the building system.

(e) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(f) Filtration shall be provided when mechanically circulated outside air is used.

(g) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other nonresident areas.

(5) Plumbing and other Piping Systems shall include:

(a) Hand washing facilities that are arranged to provide sufficient clearance for single-lever operating handles.

(b) Dishwashers, disposals and appliances that are National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(c) Kitchen grease trap location shall comply with local health department rules.

(d) Hot water provided in patient tubs, showers, whirlpools, and hand washing facilities shall be regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances. The temperature of hot water for patient fixtures shall range between 105 and 115 degrees Fahrenheit.

R432-16-15. Electric Standards.

(1) The Licensee shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for parking facilities by Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) General lighting shall be provided as required in R432-5-15(2).

R432-16-16. Penalties.

The Department may assess a civil money penalty up to $5,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $5,000, if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $500 per day for each day a new or renovated area is occupied prior to Bureau of Licensing approval.

KEY: health facilities
December 10, 2002 26-21-5
Notice of Continuation February 11, 2008 26-21-16

R501. Human Services, Administration, Administrative Services, Licensing.
R501-16. Intermediate Secure Treatment Programs for Minors.
R501-16-1. Definition.

Intermediate Secure Treatment Program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider, in a facility designed to physically restrict a person's ability to leave the program at their own free will.

R501-16-2. Purpose.

The program offers room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services. In intermediate secure treatment, each is assisted in acquiring the social and behavioral skills necessary for living in the community.

R501-16-3. Administration.

A. Records of enrollment of all registered consumers shall be on-site at all times.

B. The program shall document operational costs and revenue according to common and accepted accounting principles.

C. The program shall have fire, liability, and vehicle insurance.

D. The program shall have copies of any contracts or agreements with other service agencies or individuals providing services to the consumers of the program.

E. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

F. Providers receiving consumers into the program from outside the boundaries of the State of Utah shall initiate the Interstate Compact prior to the placement.

R501-16-4. Staffing.

A. The program shall have an employed manager who is responsible for the day-to-day resident supervision and operation of the facility. The manager shall be at least 25 years of age, have a BA or BS degree or equivalent training in a human services related field; and have at least 3 years management experience in a secure treatment setting. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a trained qualified substitute to assume managerial responsibility.

B. The program shall have all direct care staff maintain first aid and CPR certification.

C. Programs that utilize students and volunteers, who work with consumers, shall provide them with necessary training and evaluation. Those who work with consumers shall be informed verbally and in writing of program objectives and scope of service.

D. Programs shall comply with R501-14 and R501-18, BCI/MIS clearance requirements.

E. Professional staff shall include the following who have received training in the specific area of care:

1. a licensed physician, or consulting licensed physician,

2. a licensed psychologist, or consulting licensed psychologist,

3. a licensed mental health therapist, and

a. programs with an enrollment of 20 to 39 consumers shall employ one or more licensed professional therapists to provide a minimum of 20 hours service per week,

b. programs with an enrollment of 40 to 59 consumers shall employ one or more licensed professional therapists to provide a minimum of 30 hours service per week, and

c. programs with an enrollment of 60 or more consumers shall employ one or more licensed professional therapists to provide a minimum of 40 hours service per week,

4. a licensed registered nurse, or a consulting licensed registered nurse,

a. programs with an enrollment of 20 to 39 consumers shall employ one or more registered nurses to provide a minimum of 20 hours service per week,

b. programs with an enrollment of 40 to 59 consumers shall employ one or more registered nurses to provide a minimum of 30 hours service per week, and

c. programs with an enrollment of 60 or more consumers shall employ one or more registered nurses to provide a minimum of 40 hours service per week.

F. Unlicensed staff who are trained to work with youth who are chemically dependant or emotionally disturbed or behaviorally disturbed or conduct disordered, shall work under the supervision of a licensed clinical professional.

G. The Program shall maintain a minimum staff ratio of one staff to every five consumers, but shall never have less than two staff on duty at any time. During night time sleeping hours the required minimum of two staff shall be maintained for programs up to twenty-five consumers; three staff for up to fifty consumers; four staff for up to seventy-five consumers; five staff for up to one hundred consumers; and six staff for over one hundred consumers.

H. A program with a mixed gender population shall have at least one male and one female staff on duty at all times.

I. Unlicensed Direct Care Staff Training:

1. Staff shall receive 20 hours of pre-service training and orientation before being responsible for the care of consumers that shall include at a minimum, the following topics:

a. crisis intervention,

b. program policies and procedures,

c. rights and responsibilities of consumers and grievance procedures,

d. passive restraint and security procedures, and

e. fire emergency procedures.

2. Staff shall receive 30 hours of additional training annually that shall include at a minimum, the following topics:

a. human relations and communication skills,

b. special needs of youth and families,

c. problem solving and guidance,

d. consumer rules and regulations,

e. documentation and legal requirements,

f. safety in a secure setting, and

g. universal precautions for blood borne pathogens.

R501-16-5. Direct Service.

Treatment plans shall be reviewed and signed by a licensed clinical professional.

R501-16-6. Physical Environment.

A. The program shall provide documentation of compliance with:

1. local zoning ordinances,

2. local business license requirements,

3. local building codes, specific to an intermediate secure facility,

4. local fire safety regulations as required for an intermediate secure facility,

5. local and state health codes,

B. The program shall provide documentation of acknowledgment from the appropriate government agency for new program services or increased consumer capacity.

C. Building and Grounds

1. The program shall insure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall ensure a safe physical environment for consumers and staff.

3. The facility shall incorporate the use of fixtures, and

furnishings that aid in preventing occurrence of suicide, such as: plexiglass or safety glass, recessed lighting or sealed light fixtures, non exposed fire sprinkler heads, pressure release robe hooks.

4. Consumers are not to be locked in their sleeping rooms.

R501-16-7. Physical Facilities.

A. Live-in staff shall have separate living space with a private bathroom, bedroom and kitchen.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Indoor space for free and informal activities of consumers shall be available.

D. Provision shall be made for consumer privacy.

E. Space shall be provided for private and group counseling sessions.

F. Sleeping Space:

1. No more than four persons shall be housed in a bedroom.

2. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted.

3. A minimum of eighty square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Each bed shall be solidly constructed, no portable beds, and be provided with clean linens.

6. Sheets and pillowcases shall be changed and cleaned at least weekly.

7. Sleeping quarters serving male and female consumers shall be structurally separated.

8. Consumers shall be allowed to decorate and personalize bedrooms in accordance with individual treatment plans, with respect for other residents and property.

G. Bathrooms

1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe manner.

2. Each consumer shall be supplied with toilet paper, towels, soap and other items required for personal hygiene.

3. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

4. Bathrooms shall meet a minimum ratio of one toilet, one lavatory and one tub or shower for each six residents.

5. There shall be toilets and baths or showers that allow for individual privacy.

6. There shall be safety mirrors secured to the walls at convenient heights.

7. Bathrooms shall be located to allow access without disturbing other residents during sleeping hours.

H. There shall be indoor and outdoor space adequate to accommodate exercise and recreation.

R501-16-8. Equipment.

A. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

B. All furniture and equipment shall be maintained in a clean and safe manner.

R501-16-9. Laundry Service.

A. Programs that permit individuals to do their own laundry shall provide equipment and supplies.

B. Programs that provide for common laundry of linens and clothing shall provide containers for soiled laundry that are separate from clean linens and clothing.

C. Laundry appliances shall be maintained in a clean and safe condition.

R501-16-10. Food Service.

A. One person shall be responsible for food service. If this person is not a licensed dietitian, regularly scheduled consultation with a licensed dietitian shall be obtained and the meals served shall be from the dietitian's approved menus.

B. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe manner.

H. When meals are prepared by consumers there shall be a written policy to include:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-16-11. Storage.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for toxic and hazardous chemicals and materials.

R501-16-12. Medication.

A. Prescriptive medication shall be provided as prescribed by a licensed medical professional.

B. The program staff shall:

1. assist with the self-administration of medication,
2. observe the taking of medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-16-13. Specialized Services.

A. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, or unconscious.

B. Provisions shall be made for children and youth to continue their education with a curriculum approved by the State Office of Education.

C. Programs that provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

D. Unless the individual treatment plan specifies otherwise, the following therapies shall be provided to each child or youth at a minimum:

1. one individual therapy session weekly,
2. one group therapy session weekly, and
3. one family or couple therapy session monthly.

E. Consumers record files shall have documentation of time and date of the session with the signature of the provider.

F. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by consumer and appropriate staff.

G. Daily program schedules shall include activities that provide the consumer with large muscle exercise.

H. The program shall provide for activity services to meet the physical, social, cultural, health, maintenance and rehabilitation needs of the consumer as defined in the treatment plan.

I. A recreational program offering a wide variety of activities suited to the interests and abilities of the consumers and leisure counseling as needed, shall also be provided daily.

J. Health Facility Licensure Code R432-151-15. Special Treatment Procedures. Included are Section 1, Section 2, a through c and Section 3 through 4 for reference.

1. The program shall identify the behavioral interventions and special treatment procedures to be utilized and will provide justification and standards for use, and shall develop standards governing the use of these procedures consistent with consumer rights, and fire and health standards.

2. The program shall identify policies and procedures for the following:

a. use of seclusion and time out,

b. prescription and administration of drugs, and

c. use of involuntary medicine.

3. Use of painful stimuli is not allowed.

K. Programs that conduct strip searches shall have policies and procedures which have been approved by the program's governing body and legal counsel.

KEY: licensing, human services, youth
April 12, 2004 **62A-4a-413**
Notice of Continuation February 22, 2008

R501. Human Services, Administration, Administrative Services, Licensing.
R501-17. Adult Foster Care.
R501-17-1. Authority and Purpose.

Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing, hereinafter referred to as Office, shall license adult foster care.

R501-17-2. Objective.

A. These standards are to establish the minimum requirements for licensure of all Department of Human Services, hereinafter referred to as DHS, adult foster care homes.

B. Adult foster care services are provided pursuant to the Division of Aging and Adult Services, hereinafter referred to as DAAS, according to 62A-3-104(2)a.

R501-17-3. Definition.

"Adult foster care" means the provision of care in homes which are conducive to the physical, social, emotional and mental health of disabled or elderly adults who are temporarily unable to remain in their own homes due to abuse, neglect or exploitation as defined in 62A-3-301.

R501-17-4. License Procedure.

Any adult may apply to DAAS or the Office to become an adult foster care provider. The applicant will be provided with an application, a copy of rules and advised of licensing requirements and procedure. The applicant must meet the requirements for a license and for a DAAS contract.

R501-17-5. Adult Foster Care Provider and Family Requirements.

A. Personal characteristics of adult foster care provider and family, at a minimum, shall be as follows:

1. Provider shall be in good health and able to provide physical and emotional care to the consumer.

a. Provider shall have a physical examination by a medical practitioner at initial licensing.

b. Provider shall self-certify his or her personal physical condition annually.

2. Provider shall be an emotionally stable and responsible person 21 years of age or older. Both legally married couples and single individuals, may be adult foster providers.

3. Provider shall have sufficient income to maintain the family and shall not depend solely on the foster care payment.

4. DAAS employees shall not be approved as foster providers. In emergency situations an employee may provide care with approval of the DAAS Regional Director.

5. A provider must follow Office rules and DAAS rules and work cooperatively with the Office, DAAS, State, Court, and law enforcement officials.

6. A provider shall read, sign and follow the current DHS Provider Code of Conduct.

7. A provider shall comply with the requirements of R501-14 and R501-18.

B. Family Composition and Consumer Placement:

1. The number, ages, and gender of persons in the home shall be taken into account as they may be affected by or have an affect upon the adult.

2. Provider shall have no more than six children, including the provider's children under 18 years of age, living in the home.

3. No more than two children under two years of age, shall reside in an adult foster home, including natural children.

4. No more than three unrelated adults shall be placed in the home. Composition may be flexible and consider the needs of each adult and the family or provider.

5. No other programs providing care for children, youth or adults shall operate out of the same home.

R501-17-6. Physical Aspects of Home.

A. The adult foster home shall be located where school, church, recreation, and other community facilities are available or accessible through arranged transportation.

B. The physical facilities of the adult foster home shall be clean, in good repair, and provide for normal comforts in accordance with accepted community standards.

C. The adult foster home shall be free from health and fire hazards.

1. The adult foster home shall have at least one smoke detector on each floor.

2. The adult foster home shall have at least one approved fire extinguisher. The extinguisher shall be serviced annually.

3. The adult foster home shall have at least one adequately supplied first aid kit.

D. There shall be sufficient bedroom space in accordance with the following:

1. rooms are not shared by consumers of the opposite sex, and

2. each consumer shall have his or her own bed none of which shall be portable. Beds shall be solidly constructed, and provided with clean linens at least weekly or when soiled.

3. Bedrooms shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

4. Closet and dresser space shall be provided within the bedroom for the consumer's personal possessions and for a reasonable degree of privacy.

E. Building and grounds:

1. There shall be adequate indoor and outdoor space for recreational activities.

2. All indoor and outdoor areas shall be maintained in a safe and sanitary condition.

3. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

F. Equipment:

1. All furniture and equipment shall be maintained in a safe and sanitary condition.

2. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual consumer needs.

R501-17-7. Nutrition.

A. Daily meals and snacks shall meet the component, quality, and quantity of the Recommended Daily Allowance for adults.

B. The provider shall provide for specialized diet needs as required by the consumer.

C. Sanitary drinking water shall be available at all times.

R501-17-8. Emergency Plans.

A. Provider shall have a written plan of action for emergencies and disasters to include the following:

1. evacuation with a pre-arranged site for relocation,

2. transportation and relocation of consumers when necessary,

3. supervision of consumers after evacuation or relocation, and

4. notification of appropriate authorities.

B. Provider shall have a written plan for medical emergencies with arrangements for medical transportation and

care.

C. In case of emergency the provider shall notify the emergency contact person or appropriate authorities.

D. Provider shall notify the consumer's physician and DHS worker of any accidents or injuries which require medical treatment.

E. Other non-medical emergencies shall be reported to the appropriate authorities.

F. The provider shall immediately report any serious illness, injury or death of a consumer to the DAAS Regional office.

R501-17-9. Infectious Disease.

A. The provider shall have policies and procedures designed to prevent or control infectious and communicable diseases in the home.

B. The provider shall receive training in the control of infectious diseases that meet Department of Health criteria.

R501-17-10. Medication.

A. Consumers shall be responsible for administering their own medication.

B. All adult household members responsible for medications shall keep them in a safe and proper place.

C. Medication shall not be discontinued without the approval of the physician. Unusual reactions or side effects shall be reported to the physician.

D. Medication shall not be used for behavior management or restraint unless prescribed by a physician with notification to the DAAS worker.

R501-17-11. Transportation.

A. The provider shall provide or arrange necessary transportation.

B. Transportation shall be provided according to state safety requirements.

C. Drivers of vehicles shall have a valid Utah drivers license and observe Utah State driving regulations.

D. Transportation shall be provided in vehicles which have current registration and safety inspection.

E. There shall be a means of transportation in case of emergency.

F. Each vehicle shall be equipped with an adequately supplied first aid kit and an emergency list which includes the names of occupants and the name, telephone number and address of the provider.

R501-17-12. Behavior Management.

A. The provider shall provide appropriate supervision at all times.

B. The provider shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, refuse rest or visits with family, humiliating or frightening methods to control the actions of consumers.

C. The provider shall inform the DAAS worker of any extreme or repeated behavioral problems.

R501-17-13. Consumer Rights in Adult Foster Care.

A. A description of the consumer's rights and responsibilities shall be provided and explained when the adult is admitted to the home. When appropriate, the adult shall be informed verbally of this policy to his or her understanding.

B. The provider shall adhere to the following:

1. allow the consumer to eat meals with the family, and allow the consumer to eat the same food as the family unless the consumer has a special prescribed diet,
2. allow the consumer to participate in family activities,
3. protect confidentiality of information,
4. not make copies of consumer records,
5. explain consumer responsibilities, including household tasks, privileges, and rules of conduct,
6. not allow discrimination,
7. treat the consumer with dignity,
8. allow the right to communicate with family, attorney, physician, clergyman, and others, except where documented to be clinically contraindicated,
9. have a list of people whose visitation rights have been restricted by legal guardian or DAAS worker,
10. allow the right to send and receive mail, and
11. allow the consumer to manage his or her own fiscal affairs, unless the consumer has an approved representative, i.e., conservator to assist them with the management of his or her money.

R501-17-14. Record Keeping.

A. The provider shall maintain the following:

1. current license certificate,
2. copy of contracts with DAAS,
3. medical report, Form ASP19, and
4. documentation of training.

B. The provider shall maintain a file for each consumer, to include the following:

1. biographical information including a current emergency contact name and telephone number,
2. documentation of each consumer to include the following:
   a. physical, visual, and dental examinations,
   b. emergencies requiring medical treatment,
   c. medication, when applicable, and
   d. record of significant expenditures for the consumer.

KEY: licensing, human services
January 16, 2001 62A-2-101 et seq.
Notice of Continuation February 27, 2008

R510. Human Services, Aging and Adult Services.
R510-105. "Out and About" Homebound Transportation Assistance Fund Rules.
R510-105-1. Authority and Purpose.

(1) The purpose of this rule is to provide guidelines for the equitable distribution of funds collected as a result of the special revenue fund created in Section 62A-3-110 to provide public transportation assistance for seniors or people with disabilities.

R510-105-2. Definitions.

(1) Qualified Organization means an organization that facilitates the provision of public transportation to aging persons, high risk adults or people with disabilities.

(2) Public Transportation means agencies or organizations that directly provide or reimburse for public transit; the transportation of passengers only, and their incidental baggage by means other than chartered bus, sightseeing bus, taxi, or other vehicle not on an individual passenger-fare-paying basis (defined in Section 17A-2-1004).

(3) Aging Persons means adults 60 years of age or older.

(4) High Risk Adults means adults from 18 to 60 years of age, not disabled as defined in Section 62-A-5-101, but requiring transportation assistance due to a demonstrated inability to provide private transportation or utilize available public transportation.

(5) People with disabilities means disabled persons as defined in Section 62A-5-101.

R510-105-3. Eligibility.

(1) Eligible grantees shall be limited to organizations that provide public transport and may be local or state government or incorporated profit or non-profit entities engaged in providing public transportation to aging persons, high risk adults or people with disabilities.

R510-105-4. Funding Sources.

(1) The fund will consist of:

(a) Private contributions.

(b) Donations or grants from public or private entities.

(c) Voluntary contributions collected under Section 53-3-214.8, less actual administrative costs associated with collecting and transferring the contributions.

(d) Interest and earnings on account monies.

R510-105-5. Administrative Costs.

(1) Administrative costs incurred by the Division in the administration of this program shall be paid from monies in the fund.

R510-105-6. Contract Implementation.

(1) In accordance with Title 62A, Chapter 3 awards shall be implemented by contracts between the Department of Human Services, Division of Aging and Adult Services and the contractor.

(2) Contract awards will be on an annual basis, to be effective on July 1 of the beginning of the fiscal year and must be used by June 30 of the following year.

(3) All applications for the funds will be reviewed by the State Board on Aging and Adult Services.

(4) The Board shall approve all awards.

(5) The Board reserves the right to decline to award any contracts during any fiscal year in which it deems that insufficient funds are available to reasonably fund a viable contract.

(6) Funds not awarded during one year will be available for award in subsequent years.

R510-105-7. Grant Application Evaluation.

(1) Grant applications will be evaluated by the State Board of Aging and Adult Services based upon the following criteria:

(a) The amount of matching funding committed by the applicant as a percentage of the funds available.

(b) The projected number of individuals the applicant estimates can be assisted by the funding as an estimated percentage of the eligible persons in the geographic area to be served.

(c) The degree to which the applicant's proposal develops a new, ongoing source of transportation assistance not already in existence.

(d) The application shall not presume ongoing financial support from this fund, beyond the initial grant, to support the applicant's proposal.

R510-105-8. Reporting and Audit.

(1) The grantee shall collect data and maintain records relating to the project in the format specified by the Division, such data and records to be provided to the Division as specified.

(2) The grantee shall maintain sufficient financial records to support the appropriate disbursement of grant funds, and shall agree to periodic program and fiscal audits by the Division as may be deemed necessary by the Board.

KEY: transportation, seniors, disabled
March 14, 2003 **62A-3-110**
Notice of Continuation February 27, 2008

R527. Human Services, Recovery Services.
R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases.
R527-305-1. Authority.

This rule establishes procedures for High-Volume, Automated Administrative Enforcement in Interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14) of the Social Security Act.

R527-305-2. Purpose.

The purpose of this rule is to provide procedures for the IV-D Child Support Services program within the Office of Recovery Services (CSS/ORS), when a request is received from a IV-D child support agency of another state for high-volume, automated administrative enforcement of support orders.

R527-305-3. Definitions.

1. "Requesting State" means the state sending an administrative interstate enforcement request to the assisting state.
2. "Assisting State" means the state matching the requesting state's delinquent obligors against data bases and, if appropriate, seizing assets on behalf of the requesting state.
3. "High-Volume, Automated Administrative Enforcement in Interstate Cases" means the use of automated data processing to search the assisting state's data bases to determine whether information is available regarding parents who owe child support in the requesting state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases.

R527-305-4. Procedures for High-Volume, Automated Administrative Enforcement of Interstate Referrals.

The procedures below apply whenever CSS/ORS receives a request for high-volume, automated administrative enforcement of interstate cases from another state's IV-D agency.

1. Another state may transmit a request for automated administrative enforcement of support orders to CSS/ORS by electronic or other means. The requesting state may transmit a single high-volume referral that includes multiple requests.
2. A request for automated administrative interstate enforcement shall not be considered a transfer of the cases referred to the CSS/ORS caseload.
3. CSS/ORS will conduct a match of the referral data against Utah state databases to which it has access to determine if information regarding the obligor is available. CSS/ORS will notify the requesting state of the results of the search.
4. CSS/ORS will give an automated administrative interstate enforcement request the same priority it gives to a regular interstate case referred by another state for collection services or establishment, modification, or registration of an order.

KEY: child support, interstate
June 16, 1998 **62A-11-305**
Notice of Continuation February 12, 2008

R590. Insurance, Administration.
R590-175. Basic Health Care Plan Rule.
R590-175-1. Authority.

This rule is issued pursuant to Subsection 31A-22-613.5(2) and the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5(2)(a) requires that the commissioner adopt a Basic Health Care Plan.

R590-175-2. Statement of Purpose and Scope.

(1) The purpose of this rule is to adopt a Basic Health Care Plan as:

(a) a conversion plan per Section 31A-22-723; or

(b) a basic coverage plan per Section 31A-30-109.

(2)(a) This rule applies to all insurers marketing health insurance policies subject to the open enrollment provisions of Chapter 30; and

(b) to all insurers subject to 31A-22-723.

R590-175-3. General Requirements.

(1) Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one basic health care plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

(2) The basic health care plan shall not be designed or marketed in a manner that tends to discourage its purchase by anyone under the open enrollment provisions of Chapter 30.

(3) A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

(4) Each insurer must use the language in this rule to present covered services, limitations and exclusions.

(5) A plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner.

(6) The basic health care plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to an insurer's other plans.

(7) If the basic health care plan is offered by a preferred provider organization, PPO, the benefit levels shown in the plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

(8) Each insurer is to include its usual contracting provisions in its basic health care plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

(9) Each insurer who is required to offer a group conversion plan under Subsection 31A-33-723 shall file with the department at least one basic health care plan that complies with the provisions of this rule and must be offered for sale to anyone qualifying for conversion.

(10) The form to follow for the Basic Health Care Plan is as follows:

TABLE
BASIC HEALTH CARE PLAN

1. MAXIMUM BENEFIT. The maximum benefit per person for the entire period for which this policy coverage is in effect shall be $1,000,000.

2. ANNUAL MAXIMUM BENEFIT. The maximum annual benefit per person shall not be less than $300,000.

3. OUT OF POCKET MAXIMUM PER PERSON. The annual out of pocket maximum per person shall be $5,000, including any deductibles, copayments or coinsurances in the plan.

4. PREEXISTING CONDITION LIMITATION.

(a) Any preexisting condition limitation shall be in compliance with Utah Code Subsection 31A-22-605.1(4); and

(b) Any waiting period shall not exceed 12 months with credit for prior coverage when applicable.

5. GENERAL COST-SHARING FOR MEDICAL BENEFITS.

(a) Cost-sharing shall be based on eligible expenses;

(b) The cost-sharing features of the plan shall be the following:

(i) Annual Deductible

(A) The major medical deductible may not be less than $1,500 per person

(B) An annual deductible for prescription benefits may not be less than $500 per person.

(ii) Copayment.

(A) A copayment is not less than $25 per visit for office visits, including preventive care services.

(B) A copayment is not less than $150 per visit to the emergency room.

(iii) Coinsurance. For all covered services other than prescriptions, the person shall pay not less than 20% coinsurance for office visits and 20% per emergency room visits.

6. PREVENTIVE SERVICES. Preventive services covered under a managed care plan shall not be subject to the annual deductible. Covered preventive services shall consist of at least the following:

(a) childhood immunizations in accordance with guidelines as recommended by the Centers for Disease Control, as directed and modified from time to time;

(b) well-baby care through age five in accordance with guidelines recommended by the American Academy of Pediatrics, as directed and modified from time to time;

(c) for adults and adolescents, age, sex and risk appropriate preventive and screening services in accordance with Classification A guidelines recommended by the U.S. Preventive Services Task Force, as directed and modified from time to time.

7. COST SHARING FOR PRESCRIPTION DRUGS. Benefits for prescription drugs, other than self injectable drugs, except insulin, shall be subject to either:

(a) a copayment of not more than:

(i) the lesser of the cost or $15 for the first tier of drugs;

(ii) the lesser of the cost or $30 for the middle tier of drugs; and

(iii) the lesser of the cost or $60 for the highest tier of drugs; or

(b) a coinsurance of not less than:

(i) the lesser of the cost or 25% for first tier drugs;

(ii) the lesser of the cost or 40% for middle tier drugs; and

(iii) the lesser of the cost or 60% for the highest tier of drugs.

8. COST SHARING FOR MENTAL HEALTH BENEFITS. Benefits for mental health services will be provided only on conversion policies issued from group health plans offering mental health benefits and at the same level of the group policy.

9. OUTPATIENT REHABILITATION SERVICES. Benefits for outpatient rehabilitation services, e.g., physical therapy, occupational therapy, and speech therapy, shall be limited to not less than 10 visits for each illness or injury.

10. HOME HEALTH CARE. Benefits for home health care shall be limited to not less than 30 days in any 12 month period and shall consist of services provided, in accordance with a plan of care, in the home by a licensed community home health agency or an approved hospital program for home health care when the person is physically unable to obtain necessary medical care on an outpatient basis, would otherwise be confined as an inpatient, and is under the care of a physician. A "plan of care" means a written plan that:

(a) is approved by the physician prior to commencement of treatment, unless it is continuity of care under the same physician;

(b) is based on the assessment data or physician orders; and

(c) identifies the patient's needs, who will provide needed services, how often, treatment goals, and anticipated outcomes.

Covered services shall not include health aide services furnished when the person is not receiving professional services of a registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN), nor shall it include housekeeping services.

11. DURABLE MEDICAL EQUIPMENT. Benefits for durable medical equipment, rental or purchase, at the option of the insurer. Prosthetics and orthotics shall be limited to not less than $5,000 per person for the entire period for which coverage is in effect.

12. COVERED SERVICES. Subject to medical necessity, provider network, and prior approval criteria established by the insurer, and subject to the limitations and exclusions and other terms and conditions of the policy, the following shall be

covered services under the basic health care plan:
(a) inpatient hospital services:
(i) semi-private room accommodations;
(ii) ICU;
(iii) hospital services and supplies;
(b) ambulatory service facility services:
(i) birthing center services, when maternity care is covered;
(ii) surgical facility services;
(c) office preventive services;
(d) office medical services:
(i) diagnostic services; e.g., x-ray, lab tests;
(ii) therapeutic services; e.g., injection of medication;
(e) outpatient hospital services:
(i) emergency room services;
(ii) diagnostic services;
(iii) therapeutic services; e.g., chemotherapy, radiation therapy;
(iv) surgical facility services;
(f) inpatient medical services; e.g., physician visits;
(g) surgery;
(h) assistant-at-surgery;
(i) anesthesia, including children's general anesthesia for dental, if necessary;
(j) consultation;
(k) dental care for accidental injury to sound natural teeth;
(l) limited home health care;
(m) emergency ambulance transportation;
(n) prescription drugs;
(o) durable medical equipment, prosthetics and orthotics, as limited; and medical supplies;
(p) maternity services:
(i) for employer group conversion plans, maternity benefits are provided on the same basis as benefits for sickness;
(ii) for individual plans, there are no maternity benefits;
(iii) benefits for complications of pregnancy are provided on the same basis as benefits for sickness. Complications of pregnancy will not be excluded solely because the pregnancy is a preexisting condition. "Complications of pregnancy" means diseases or conditions, the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.
Complications of pregnancy does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy. In no event will the presence of complications of pregnancy result in benefits being provided for services normal to care and treatment of pregnancy and childbirth. Such normal services include but are not limited to hospitalization for childbirth or termination of pregnancy by any means, anesthesia services, ultrasound examinations, prenatal diagnostic laboratory services, antepartum and postpartum care, vaginal or cesarean delivery, threatened premature termination, premature termination, and routine nursery care of the newborn;
(iv) newborn and maternity inpatient time limits will conform to Subsection 31A-22-610.2. For conversion plans, maternity will be covered with the lesser of benefits originally on plan prior to conversion or the basic benefit plan. This coverage benefit is only for existing pregnancies, known or unknown at the time of conversion. Additional premium for pregnancy is not allowed;
(q) limited outpatient rehabilitation services;
(r) limited mental illness/substance abuse services;
(s) diabetes as required by Section 31A-22-626.
(t) inborn metabolic errors, PKU, nutritional benefits as required by Section 31A-22-623; and
(u) mastectomy as required by Sections 31A-22-630 and 31A-22-719.
13. EXCLUSIONS. Benefits will not be provided for any of the following:
(a) services, supplies, or treatment provided prior to the effective date or after the termination date of coverage;
(b) charges in connection with a work-related injury or sickness for which coverage is provided under any state or federal workers' compensation, employer's liability, or occupational disease law;
(c) services, supplies, or treatment for which coverage is provided under any motor vehicle no-fault plan. When the person is required by law to have no-fault insurance in effect, this exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;
(d) services, supplies, or treatment for injury or sickness resulting from war or any act of war whether declared or undeclared;
(e) services, supplies, or treatment for injury or sickness resulting from service in the military of any country;
(f) services, supplies, or treatment for which benefits are provided under Medicare or any other government program except Medicaid;
(g) services, supplies, or treatment for which no charge is made or for which the person is not required to pay;
(h) services or supplies not incident to or necessary for the treatment of injury or sickness or which are not medically necessary, as determined by the insurer;
(i) treatment or prevention of an injury or sickness, including mental illness, by means of treatments, procedures, techniques, or therapy outside generally accepted health care practice;
(j) services, supplies, or treatment required as a result of an injury or sickness sustained while committing a felony or engaging in an illegal occupation;
(k) services to the extent benefits are provided by any governmental unit except as required by federal law for treatment of veterans in Veterans Administration or armed forces facilities for non-service related medical conditions;
(l) examinations, reports, or appearances in connection with legal proceedings; and services, supplies, or accommodations pursuant to a court order, whether or not injury or sickness is involved;
(m) investigative/experimental technology, treatment, procedure, facility, equipment, drug, device or supply, "technology," which does not, as determined by the insurer on a case by case basis, meet all of the following criteria:
(i) the technology must have final approval from appropriate governmental regulatory bodies, if applicable;
(ii) the technology must be available in significant number outside the clinical trial or research setting;
(iii) the available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the insurer to conclude that:
(A) the technology is both medically necessary and appropriate for the person's treatment;
(B) the technology is safe and efficacious; and
(C) more likely than not, the technology will be beneficial to the person's health;
(iv) the regional medical community as a whole must generally recognize the technology as appropriate;
(n) services in connection with any transplant of any whole organ or part thereof, live or cadaver, bone marrow, either as donor or recipient, or any artificial organ, except for the following:
(i) cornea transplants;
(ii) kidney transplants;
(iii) liver transplants for children under age 18 years;
(iv) bone marrow transplants for children under age 18 years; and
(v) evaluation, treatment and therapy involving the use of myeloablative chemotherapy with autologous hematopoietic stem cell and/or colony stimulating factor support for children under age 18 years;
(o) custodial care;
(i) "Custodial care" means:
(A) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the person's environment; and
(B) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the person's disability or maintaining the person's degree of recovery already attained without reasonable expectation of significant further recovery.
(ii) "Custodial care" does not mean outpatient palliative and supportive care provided by a hospice program to a person who is terminally ill with a life expectancy of not more than six months and is in lieu of institutional or inpatient hospital care;
(p) services, supplies, or treatment in connection with cosmetic or reconstructive procedures which alter appearance but do not restore or improve impaired physical function or which are performed for psychological or emotional purposes, except when performed while a person is covered under this policy for the following:
(i) repair of defects resulting from an accident occurring within 90 days of the effective date of this policy under creditable coverage or occurring during this policy;
(ii) replacement of diseased tissue surgically removed for illness occurring within 90 days of this policy under creditable coverage or occurring during this policy;
(iii) treatment of a birth defect in a child who has met the pre-existing conditions requirement since birth or date of placement for adoption; and
(iv) mastectomy reconstruction as required by Sections 31A-22-630 and 31A-22-719;
(q) dental services. This exclusion will not apply if dental services are required as a result of an accidental injury which occurs while coverage is in force, dental services are received within two years following the accidental injury, and the person has been continuously covered from the date of the accidental

injury through the date the dental services are provided;
(r) eyeglasses, contact lenses and/or servicing of eyeglasses and/or contact lenses. This exclusion does not apply to contact lenses in the case of keratoconus or post-cataract surgery when the contact lenses are medically necessary in the treatment of the condition;
(s) medical, non-surgical, care of weak, strained, flat, unstable or unbalanced feet routine foot care. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;
(t) orthopedic or corrective shoes, foot orthotics, or any other supportive devices for the feet;
(u) drugs and medicines which do not bear the legend "Caution - federal law prohibits dispensing without a prescription" and/or which are not dispensed by a licensed pharmacist;
(v) charges in connection with jaw realignment procedures including, but not limited to, osteotomy, upper or lower jaw augmentation or reduction procedures, and orthognathic surgery; charges in connection with treatment of temporomandibular joint (TMJ) dysfunction, including surgical procedures and injections of the TMJ, physical therapy, splints, and orthodontic appliances. This exclusion will not apply to:
(i) the initial diagnostic evaluation of TMJ dysfunction;
(ii) surgical correction of the TMJ required as a result of an accidental injury which occurs while this coverage is in force; and
(iii) physical therapy services related to and subsequent to covered TMJ surgery;
(w) treatment of obesity by means of surgical, medical or medication services and regardless of associated medical, emotional, or psychological conditions;
(x) services or supplies in connection with genetic studies;
(y) implantable contraceptives (hormonal or other);
(z) reversal of a sterilization procedure;
(aa) any treatment for or diagnosis of infertility, artificial insemination, in vitro fertilization, and any other male or female dysfunction, except as required by Section 31A-8-101;
(bb) vision testing, vision training;
(cc) radial keratotomy, laser and any surgical correction of errors of refraction;
(dd) educational service or counseling, including weight control clinics, stop smoking clinics, cholesterol counseling, exercise programs or other types of physical fitness training, except for those benefits required by Section 31A-22-626;
(ee) marriage counseling; family counseling; counseling for educational, social, occupational, religious, or other similar maladjustment; behavior modification, biofeedback, or rest cures as treatment for mental disorders; sensitivity or stress-management training; self-help training; and residential treatment;
(ff) treatment for mental disorders which are irreversible or for which there is little or no reasonable expectation for improvement, including mental retardation, personality disorders, and chronic organic brain disease. This exclusion does not apply to the initial assessment for diagnosis of the condition;
(gg) psychotherapy, counseling, or other services in connection with learning disabilities, disruptive behavior disorders, conduct disorders, psychosexual disorders, or transexualism. This exclusion does not apply to the initial assessment for diagnosis of the condition;
(hh) vitamins, special formulas, special diets, and food supplements except as provided by a hospital or skilled nursing facility during a confinement for which benefits are available, except as outlined in Section 31A-22-623;
(ii) any devices used to aid hearing, including cochlear implants, the fitting of such devices and any routine hearing tests;
(jj) acupuncture or acupressure;
(kk) speech therapy for psychosocial speech delays;
(ll) all shipping, handling, or postage charges except as incidentally provided, without a separate charge, in connection with covered services or supplies;
(mm) interest or finance charges except as specifically required by law;
(nn) charges for missed appointments, telephone consultations, and clerical services for completion of special reports or claim forms;
(oo) travel expenses, whether or not prescribed;
(pp) care, except urgent or emergency care, rendered outside the United States;
(qq) services provided by a member of the person's immediate family or household; and
(rr) autopsy procedures.

(11) The basic health care plan is to be filed with the department before use.

(12) Conversion coverage provided pursuant to Section 31A-22-723, may provide additional benefits in addition to the Basic Health Care Plan.

R590-175-4. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-175-5. Severability.

If a 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 these provisions shall not be affected.

KEY: insurance
February 8, 2008 **31A-22-613.5**
Notice of Continuation November 8, 2005

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the request for agency action regarding a workers' compensation claim.

4. "Supporting medical documentation" means a Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury.

5. "Authorization to Release Medical Records" is a form authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, list of medical providers, Authorization to Release Medical Records and, when applicable, an Appointment of Counsel Form.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, or medical provider, to initiate agency action by filing an Application for Hearing with the Division. Applications for hearing shall include an original, notarized Authorization to Release Medical Records.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division.

3. All Applications for Hearing shall include any available supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Authorization to Release Medical Records may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of all available medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include available medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63-46b-11(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63-46b-11(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the

case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which

compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $112.50 per half hour for medical panel members and $125 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for

time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $15,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $22,000;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $27,000.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decides in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
February 7, 2008 34A-1-301 et seq.
Notice of Continuation August 15, 2007 63-46b-1 et seq.

R602. Labor Commission, Adjudication.
R602-3. Procedure and Standards for Approval of Assignment of Benefits.
R602-3-1. Policy, Scope and Authority.

A. Policy. Utah's workers' compensation system provides disability compensation to injured workers as a partial replacement for lost wages. These periodic payments allow injured workers to provide for the ongoing necessities of life--food, shelter and clothing--not only for themselves, but for their dependents. These periodic payments also prevent injured workers from becoming charges on public welfare or private charity.

The 2007 Utah Legislature reaffirmed and strengthened the foregoing policy of the workers' compensation system by enacting Senate Bill 109, "Transfers of Structured Settlements." Senate Bill 109 amended Section 34A-2-422 of the Utah Workers Compensation Act to specifically prohibit any transfer of workers' compensation payment rights unless the proposed transfer is first submitted to the Utah Labor Commission and approved by the Commission.

B. Scope. This rule establishes the procedural and substantive requirements for Commission approval of any request for transfer of workers' compensation payment rights. The Commission will not approve any transfer of workers' compensation payment rights in the absence of strict compliance with all procedural and substantive requirements of the Utah Workers' Compensation Act and this rule.

C. Statutory authority. The Commission enacts this rule pursuant to Subsection 34A-1-104(1) and Section 34A-1-304 of the Utah Labor Commission Act, Section 34A-2-422 of the Utah Workers' Compensation Act, and Subsection 63-46a-3(2) of the Utah Administrative Rulemaking Act.

R602-3-2. Benefits Subject to Assignment.

A. Commission approval a precondition to any action to transfer benefits. Subsection 34A-2-422(3) prohibits any transfer, or action to transfer, workers' compensation payment rights without prior Commission approval. The Commission will not approve any proposed transfer that includes an advance of funds or property, or other similar action, without prior Commission review.

B. Transfer limited to benefits that are fixed and certain. Pursuant to Subsection 34A-2-422(3)(c), Commission approval of a transfer of workers' compensation payment rights is a "full and final resolution" of such payment rights. The Commission will, therefore, approve transfer of only those payment rights that are fixed and certain as a matter of law. The Commission will not approve the transfer of payment rights that are subject to modification under any provision of the Utah Workers' Compensation Act or other applicable law.

C. New petition required for additional transfers. A petition may not request Commission approval of future, open-ended or follow-up transfers of payment rights. A new petition must be submitted for approval of any such additional transfers.

D. Medical benefits. An injured worker is entitled to continuing medical care necessary to treat his or her work-related injuries. These medical benefits are, by their nature, contingent on the injured worker's future medical condition and progress in medical and pharmacological science. For these reasons, medical benefits are not "fixed and certain," and the Commission will not approve any request for transfer of medical benefits.

R602-3-3. Procedure for Requesting Approval.

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide written notice and explanation of the proposed transfer to the transferor in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

i. A description of the specific workers' compensation payment rights proposed to be transferred;

ii. An explanation of the legal effect of the transfer;

iii. An explanation of all alternatives to the proposed transfer; and

iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

i. The amount and due date of each payment to be transferred;

ii. The sum of all payments to be transferred;

iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;

iv. The gross amount payable by the transferee in exchange for the payments to be transferred;

v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.

vi. An itemized listing any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;

vii. The net amount to be paid to the transferee;

viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and

ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be

in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;

2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer and owner of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63-46b-12 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY: workers' compensation, administrative procedures, hearings, settlements

February 7, 2008 **34A-1-104(1)**
34A-1-301 et seq.
34A-4-304
34A-2-422
63-46a-3(2)
63-46b-1 et seq.

R653. Natural Resources, Water Resources.
R653-2. Financial Assistance from the Board of Water Resources.
R653-2-1. Purpose.

The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

R653-2-2. Description of Funding Program.

(1)(a) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

(b) The Board will fund projects based on the following prioritization system:

(i) Projects which involve public health problems, safety problems, or emergencies.

(ii) Municipal water projects that are required to meet an existing or impending need.

(iii) Agricultural water projects that provide a significant economic benefit for the local area.

(iv) Projects which will receive a large portion of their funding from other sources.

(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first come first served basis.

(2) The Board will not fund the following types of projects:

(a) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

(b) Domestic water systems where less than 20% of the residents live in the project area year-round.

(c) Projects sponsored by developers.

(3) General guidelines of each of the Board's funding programs are:

(a) Revolving Construction Fund (RCF)

(i) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

(ii) The RCF advances financial assistance to the following types of projects:

(A) Irrigation projects costing less than $500,000.

(B) Rural culinary projects costing less than $250,000 that involve mutual irrigation and water companies.

(C) Dam Safety Studies

(iii) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.

(b) Cities Water Loan Fund (CWLF)

(i) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.

(ii) The staff will recommend repayment terms and interest rates in the feasibility report.

(c) Conservation and Development Fund (CDF)

(i) Through the CDF, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.

(ii) The staff will recommend repayment terms and interest rates in the feasibility report.

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division for action.

(2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

(3) An application form can be obtained from the Division, a Board member, or the Division's website.

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) Approval for Staff Investigation

(i) The Board member considers the proposed project to fall within the Board's general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.

(b) Authorization

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.

(iii) If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project, and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:

(A) Preparation of a Water Management and Conservation Plan for the sponsor's service area.

(B) Adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.; the Division has prepared a Model Ordinance which is available for the sponsors of municipal projects.

(C) Adoption of a progressive water rate schedule (municipal projects). Division staff will assist sponsors in establishing such schedules to fit local conditions and circumstances.

(c) Committal of Funds

(i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.

(ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

(1) After the application for assistance has been completed and signed by the Board member the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam

Safety Act and requirements, if any, placed on the sponsor by the State Engineer.

(2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

(3) Grants will be considered when money is appropriated by the legislature and will be restricted by limitations placed on the funding by the legislature and Board.

(4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements.

(1) Project Cost Sharing

(a) The Board desires to optimize available funding for the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.

(b) The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. The sponsor will generally be expected to provide 15% - 25% of the project cost.

(c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

(2) Alternate Financing

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(3) Repayment of Financial Assistance

(a) The repayment period will generally be less than 25 years.

(b) The minimum annual cost of water for municipal projects will be 1.17% of the region or project area's annual median adjusted gross income. The percentage will increase with income.

(c) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(4) Security Arrangements

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the Revolving Construction Fund must be secured by a purchase agreement.

(ii) Projects financed through the Cities Water Loan Fund or the Conservation and Development Fund will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.

(iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(B) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction.

(1) Engineering

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

(2) Staff and Legal Costs

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

(3) Design Standards and Approval

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah registered professional engineer responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project.

(4) Project Bidding and Construction

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the registered professional engineer having responsible charge of project construction.

R653-2-8. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding
February 25, 2008 **73-10**

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or

obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length

from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person,

except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-21; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns only during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) No permit, license or Certificate or Registration is required to gather shed antlers and shed horns.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit

shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) a person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(2)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

(3) Applications are available through the division's Internet address.

(4) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(5) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(6) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

(7) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(8)(a) Applications must be submitted online by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).

(11) To apply for a resident permit, a person must be a resident at the time of purchase.

(12) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) People may not apply together for management bull elk permits in the big game drawing as provided in R657-5-71(2)(b).

(c) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(d) Up to ten people may apply together for general deer permits in the big game drawing.

(e) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of a group.

(2)(a) Applicants must indicate the hunters in the group by marking the appropriate box on the application form.

(b) If the appropriate box is not marked indicating the hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Residents and nonresidents may apply together.

(4)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(5) When applying as a group:

(a) if the group is successful in the drawing, then all

applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Drawings, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and Utah hunting or combination license fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry, management bull elk or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit

through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited entry permits in the big game or antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game or antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry, management bull elk, and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, management and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(d) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(e) A person may only apply for bonus points in the big game and antlerless drawings.

(f) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of

applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-5-37B. Preference Point System.

(1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid unsuccessful application when applying for a general buck deer, antlerless deer, antlerless elk, or doe pronghorn permit; or

(ii) each valid application when applying only for a preference point in the big game or antlerless drawing.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.

(4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game and antlerless drawing.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.

(c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer statewide within a general hunt area published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon

buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units;

(iii) one elk, any bull or antlerless on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the

extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Premium Limited Entry and Limited Entry Bull Elk Hunts.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will

be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) A youth may apply in the antlerless drawing as provided in Subsection (3) or Subsection R657-5-59(3).

(5) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(6) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(7) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsection R657-5-59(4) and Section R657-5-61.

(8)(a) Applications must be submitted online by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) Applicants shall be notified by mail of draw results by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-57; and

(ii) not apply as a group.

(d) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees are nonrefundable.

R657-5-61. Over-the-Counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime and management bull elk, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking big game.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the

Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

Fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-66. Special Hunt Drawing.

(1) Applicants shall be notified by mail of draw results by the date published in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game or the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-71. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the

permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management bull elk permits.

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing.

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 72 hours of leaving the hunting area.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

R657-5-72. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-42, and

(b) antlerless elk, as provided in Subsection R657-5-48.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

KEY: wildlife, game laws, big game seasons

February 7, 2008	**23-14-18**
Notice of Continuation November 21, 2005	**23-14-19**
	23-16-5
	23-16-6

R657. Natural Resources, Wildlife Resources.
R657-23. Utah Hunter Education Program.
R657-23-1. Purpose and Authority.

Under authority of Section 23-19-11, this rule provides the process and requirements for:

(1) hunter education instructor and student training; and

(2) presenting and obtaining proof of having successfully completed an approved hunter education course.

R657-23-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

(b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.

(c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.

(d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country, and signed by a hunter education instructor, verifying successful completion of an approved hunter education course.

(e) "Practical exercise and testing day" means a student has successfully completed the hunter education course online and shall participate in taking a written test, a practical shooting test, and instruction on firearms safety and hunter responsibility during a minimum of five hours with a hunter education instructor.

(f) "Trainer" means a volunteer hunter education instructor or Division employee who has been certified by the division to train hunter education instructors.

(g) "Instructor" means a volunteer hunter education instructor or division employee who has been certified by the division to teach the hunter education program to students.

(h) "Online hunter education course" means a hunter education course that is completed online substituting the minimum 12 hours classroom requirement, and is taken through the division's Internet address.

(i) "Student" means a person who is registered in a hunter education course being taught by a certified hunter education instructor.

(j) "Traditional hunter education course" means a hunter education course that is a minimum of 12 classroom hours, a written test and a practical shooting test.

R657-23-3. Hunter Education Required.

(1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of having passed a division approved hunter education course.

(b) A person may take a hunter education course offered by the division as provided in Subsection (2), (3), or (4).

(2) Completion of a traditional hunter education course requires students to:

(a) purchase a hunter education voucher from a Division authorized licensed vendor;

(b) attend the minimum 12-hour classroom course;

(c) behave in a safe and responsible manner in class;

(d) obtain a passing score of at least 75% on a written test; and

(e) obtain a passing score of at least 50% on a shooting practical test.

(3) Completion of the online hunter education course requires students to:

(a) purchase a hunter education voucher from a Division authorized licensed vendor.

(b) pre-register for the field day by contacting the instructor by mail, e-mail or telephone;

(c) comprehensively read each chapter of the online workbook, and complete and obtain a passing score of at least 80% of each quiz that is provided after each chapter of the workbook;

(d) behave in a safe and responsible manner while attending the field day;

(e) obtain a passing score of at least 75% on a written test; and

(f) obtain a passing score of at least 50% on a shooting practical test.

(4)(a) The division will issue a Blue Card to each individual who successfully completes the hunter education course.

(b) A Blue Card shall not be issued to a person who has not successfully completed the hunter education requirements.

(6) The division shall accept other states, provinces, and countries criteria and qualifications for their respective courses, which meet or exceed the International Hunter Education Association hunter education standards.

R657-23-4. Documents Accepted as Proof of Completion of a Hunter Education Course.

(1) The division and division approved license agents shall accept proof of completion of an approved hunter education course in accordance with Section 23-19-11.

(2)(a) Any person who has completed an approved hunter education course in another state, province, or country and becomes a Utah resident must obtain a transfer Blue Card prior to purchasing a resident hunting license.

(b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).

(3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.

(4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.

(5)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office, or may contact an authorized division representative to obtain a duplicate Blue Card. The person must complete an affidavit and request a record's search.

(b) Upon verification of completion of the hunter education course, the division or authorized division representative may issue the person a duplicate Blue Card.

(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under Section R657-23-3.

(7) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.

(8) The division may charge a fee for the services provided in Subsections (2), (3), (4), and (5).

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to:

EITHER

(a) attend the 18 hour classroom course conducted by a trainer;

(b) pass a criminal background check according to Division policy W-6-LAW-15;

(c) obtain a passing score of at least 80% on a written test; and

(d) obtain a passing score of at least 50% on a shooting practical test.

OR

(a) Complete the Division's online instructor course.

(b) Pass a criminal background check according to Division policy W-6-LAW-15;

(c) Attend a 6 hour workshop conducted by a trainer.

(d) Obtain a passing score of at least 75% on a written test; and

(e) Obtain a passing score of at least 50% on a shooting practical test.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

KEY: wildlife, game laws, hunter education
February 7, 2008 **23-19-11**
Notice of Continuation December 6, 2007

R671. Pardons (Board of), Administration.
R671-403. Restitution.
R671-403-1. Policy.

The Board shall consider restitution in all cases where restitution has been ordered by the court, when requested by the Department of Corrections or other criminal justice agencies, or other appropriate cases.

R671-403-2. Procedure.

The Board may originate orders of restitution on any crime(s) of commitment in accordance with UCA 77-38a-302.

The Board shall affirm court-ordered restitution in accordance with UCA 77-38a-302.

The Board may consider ordering restitution in the following instances:

A. When ordered by or as part of a disciplinary proceeding as a result of inappropriate behavior;

B. When requested by the Department of Corrections or other criminal justice agency for the costs of extradition or return to custody.

C. When requested by the Department of Corrections for the costs of programs such as unpaid fees at community correction centers, therapy or other service fees; and

D. When new information is made available that was not available to the court at the time of sentencing or prior restitution hearing.

The Board may conduct a restitution hearing to determine the amount of restitution owed by an offender. The Board will make a reasonable effort to inform both the offender and the victim(s) of the hearing and will provide copies of rules and investigative reports and other documentation. The offender and the victim(s) shall have the right to be present at the hearing and present evidence in their behalf.

KEY: restitution, government hearings, parole
September 27, 2007 **77-27-5**
Notice of Continuation February 4, 2008 **77-27-6**
77-27-5.5

R686. Professional Practices Advisory Commission, Administration.
R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.
R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

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

D. "Chair" means the Chair of the Commission.

E. "Commission" means the Utah Professional Practices Advisory Commission (UPPAC) as defined and authorized under Section 53A-6-301 et seq.

F. "Complaint" means a written allegation or charge against an educator.

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

H. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

I. "Criminal conduct" means a criminal offense the conviction for which would likely create, or has created, a substantial and adverse impact on the educator's ability to perform the duties of his employment, including his duty as a role model for students.

J. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

L. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

M. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

N. "Final action" means any action by the Commission or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

O. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

P. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The Hearing Officer may not be an acting member of the Commission. The Hearing Officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

Q. "Hearing Panel" means a Hearing Officer and three or more members of the Commission agreed upon by the Commission to assist the Hearing Officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

R. "Hearing report" means a report prepared by the Hearing Officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

S. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

T. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

V. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

W. "Licensing file" means a file that is opened and maintained on an educator following a written complaint to the Commission.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Office" means the Utah State Office of Education.

Z. "Party" means the complainant or the respondent.

AA. "Recommended disposition" means a recommendation for resolution of a complaint.

BB. "Prosecutor" means the attorney designated by the Board to represent the complainant and present evidence in support of the complaint.

CC. "Request for agency action" means a document prepared by the Executive Secretary, containing one or more

allegations of misconduct by an educator, a recommended course of action, and related information.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

FF. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

GG. "Stipulated Agreement" means an agreement between a Respondent and the Board or a Respondent and the Commission under which disciplinary action against an educator's license status has been taken, in lieu of a hearing. At anytime after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties, approved by the Commission, and becomes binding when approved by the Board, if necessary.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and licensing hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission has the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct and Disposition by Commission and Records of Allegations.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An Informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The facts on which the allegations are based and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the Informant and date.

(2) If an Informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the Informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Information received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

B. At the discretion of the Commission, all written allegations and subsequent dismissal or disciplinary action of a case against an educator may be maintained permanently in the individual's paper licensing file.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: On reviewing the request for agency action, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of actionthat the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall appoint an investigator to gather evidence relating to the allegations.

(1) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2) The investigator shall prepare a written report of the findings of the investigation.

(3) If the investigator discovers additional evidence of unprofessional conduct which should have been included in the original request, it may be included in the investigation report.

(4) The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission.

(5) The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, a copy of the letter to the district of current employment, and to the district where the alleged activity occurred, with information that an investigation has been initiated. The letter shall indicate to the educator and the district(s) that an investigation will take place and is not evidence of unprofessional conduct.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, it shall recommend to the Commission that the request for agency action be dismissed as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare and serve a Complaint and a copy of these rules upon the Respondent. The Complaint shall have a heading similar to that used for the request for agency action, and shall include:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Prosecutor believes to be necessary to enable the Respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true or substantially true;

(e) A statement that, the Respondent shall respond to

the Complaint , request a hearing, or discuss a stipulated agreement, within 30 days of the date the Complaint was mailed to the Respondent, by filing a written response addressed to the Executive Secretary of the Professional Practices Advisory Commission, at the mailing address for the Office. The statement shall advise the Respondent of the potential consequences if the Respondent fails to respond to the Complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the Respondent's response, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.

(3) A Stipulated Agreement between the parties.

(4) That the action be taken by the Commission.

F. RESPONSE to the Complaint: Any response to the compliant shall be made by filing a written response signed by the Respondent or his representative with the Executive Secretary within 30 days after the Complaint was mailed. The answer may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the Complaint;

(2) The names of the parties;

(3) A statement of the relief that the Respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the answer, or no more than 30 days after the answer was due, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall recommend one of the following to the Commission:

(a) Enter a Default: If the Respondent fails to file an answer, fails to request a hearing, fails to request or respond to a proffered Stipulated Agreement within 30 days after service of the Complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the Informant and Respondent shall each be served with notice of the dismissal.

(c) Schedule a Hearing: If the Respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a Stipulated Agreement: Respondent may agree to a Stipulated Agreement at any time after an investigative letter has been sent. No Stipulated Agreement shall be final until authorized by the Commission and, if the Agreement is for suspension or revocation, acted on by the Board.

G. A Stipulated Agreement shall, at minimum, include:

(1) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the Respondent's response, if any;

(2) A statement that the Respondent agrees to limitations on his license or surrenders his license rather than contest the charges and the Respondent accepts the facts recited in the Stipulated Agreement as true;

(3) A commitment from the Respondent that he shall not seek or provide professional services in a public school in any state, or otherwise seek to obtain or use a license in any state, or work or volunteer in a public K-12 setting in any capacity unless or until the Respondent first obtains a valid Utah license or authorization from the Board to obtain such a license, or satisfy other provisions provided in the Stipulated Agreement;

(4) Provision for surrender of Respondent's license or evidence in a form acceptable to the Commission that the Respondent does not have a paper copy of the license;

(5) A statement that the surrender and the Stipulated Agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(6) Other provisions applicable to the case, such as remediation, counseling, rehabilitation, and conditions--if any--under which the Respondent may request a reinstatement hearing or resissuance of his license.

(7) A statement that the Respondent waives his right to a hearing to contest the allegations in the Complaint, or the contents of the Stipulated Agreement, and that the Respondent agrees to the terms of the Stipulated Agreement.

(8) A statement that Respondent waives any right to contest the facts stated in the Stipulated Agreement at a subsequent reinstatement hearing, if any.

(9) A statement that all records related to the Stipulated Agreement shall remain permanently in the educator's licensing file at the Office.

(a) The Stipulated Agreement shall be forwarded to the Commission for approval.

(b) If the Commission rejects the request or the Stipulated Agreement, the Respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(c) If the Commission accepts the Stipulated Agreement, the agreement shall be forwarded to the Board for consideration.

(d) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) If, after requesting a Stipulated Agreement, a Respondent fails to sign or respond to a proffered Agreement within 30 days after the Agreement is mailed, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(f) Violations of the terms of a valid Stipulated Agreement may result in an additional five-year revocation of the Respondent's license.

H. Other Disciplinary Action:

(1) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, a written reprimand, or an agreement not to teach.

(2) If so directed, documentation of the disciplinary action shall be sent to the Respondent's employing school district or to a district where the Respondent finds employment.

(3) Additional conditions of retention and documentation of disciplinary actions taken by the Commission are provided in R686-100-15.

I. Agreement not to teach:

(1) If compelling circumstances exist, as determined by the Commission, an educator may agree not to be employed in the schools of any state without thorough and exhaustive

review of all allegations of misconduct.

(2) Compelling circumstances may include a single serious allegation with mitigating circumstances that did not involve students within a long-term, otherwise exemplary, career.

(3) Other provisions:

(a) The educator shall surrender his educator license to the Commission;

(b) The NASDTEC Clearinghouse shall receive notification of the invalidation of the educator's license;

(c) The educator may be required to provide to the Commission annually employment and current address information;

(d) Acknowledgment may be made of the existence of the agreement not to teach, otherwise the agreement and its provisions shall remain confidential.

(e) If the educator breaches the agreement not to teach, the agreement shall be voidable at the sole discretion of the Commission, and the Commission may initiate further disciplinary action against the educator.

J. Probation

(1) If compelling circumstances exist, as determined by the Commission, an educator may be placed on probation for a specified period of time.

(2) A hearing report or a Stipulated Agreement may provide directives for an educator during the specified probation period.

(3) A probationary term shall be reported to the educator's employing district or school and referenced on the educator's Cactus file.

(4) At the end of the probation term, the educator may petition the Executive Secretary for termination of probation. The petition shall include:

(a) complete documentation of satisfaction of all terms of probation. Incomplete, inaccurate or misleading documentation shall not be considered;

(b) a written statement by the educator explaining the reasons termination of probation is warranted;

(c) results of a criminal background check completed within six months of the request;

(d) any other documentation or evidence requested by the Executive Secretary.

(5) The Executive Secretary and Investigator shall review the documentation, may schedule an informal hearing with the probationary educator, and make a recommendation to Commission if termination of probation is warranted.

(6) If the Executive Secretary or the Commission determine that termination is not warranted, the educator may reapply for termination of probation no sooner than one year from the date of the Executive Secretary or Commission decision.

(7) Consequences for violation of probation or failure to satisfy all conditions of probation may include an extended probation, a renewed investigation, and notice to an employer that the individual is in violation of a professional probation agreement.

K. Surrender:

(1) If an educator surrenders his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's licensing file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final action. Surrender shall include a Stipulated Agreement or findings of fact, as determined by the Commission, to complete the educator's misconduct file, except as provided in Section (6) and (7) of this part.

(5) Upon receipt of the educator's license by the Executive Secretary, the educator shall be notified in a timely manner that:

(a) he has the right to a hearing before the Commission to contest specific allegations against him;

(b) he has a right to consult an attorney concerning the allegations;

(c) absent response by the educator, the educator admits that the allegations set forth in the Complaint are substantially true;

(d) the Board may take action to suspend or revoke the educator license following the surrender and notice of procedures and consequences to the educator; and

(e) following final administrative action by the Commission or action by the Board, the status of the educator's license shall be indicated on the educator's CACTUS file.

(6) An educator who agrees to surrender his license pursuant to a plea, diversion, or similar agreement from a court shall be deemed to have waived his right to a Stipulated Agreement or hearing before the Commission. The Board may take action to revoke his license upon receipt of the applicable plea or diversion agreement.

(7) An educator who returns his license to the Commission without signing a Stipulated Agreement or requesting a hearing within 60 days after the receipt of his license by the Office shall be deemed to have waived his right to an agreement or a hearing.

R686-100-5. Hearing Procedures.

A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a Hearing Officer from among a list of Hearing Officers identified by the state procurement process approved by the Commission, and schedule the date, time, and place for the hearing. The selection of Hearing Officers shall be on a rotating basis, to the extent practicable, from the list of available Hearing Officers. The selection of a Hearing Officer shall also be made based on availability of individual Hearing Officers and whether any financial or personal interest or prior relationship with parties might affect the Hearing Officer's impartiality or otherwise constitute a conflict of interest. The Executive Secretary shall provide such information about the case as necessary to determine whether the Hearing Officer has a conflict of interest and shall disqualify any Hearing Officer that cannot serve under the Utah Rules of Professional Conduct. The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual written consent of the parties or by the Commission for good cause shown.

B. Change of Hearing Date:

(1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change of hearing date.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.

R686-100-6. Appointment and Duties of the Hearing Officer and Hearing Panel.

A. Hearing Officer: The Executive Secretary shall appoint a Hearing Officer at the request of the Commission to chair the hearing panel and conduct the hearing. The Hearing Officer:

(1) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(2) presides at the hearing and regulates the course of the proceedings;

(3) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(4) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(5) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members consistent with R686-100-1R and the timelines of this rule.

B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel. As directed by the Commission, former Commission members who have served on the Commission within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current Commission members.

(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.

(2) The majority of a panel shall be educators.

(3) If the Respondent is a teacher, at least one panel member shall be a teacher. If the Respondent is an administrator, at least one panel member shall be an administrator unless the Respondent objects to the configuration of the panel.

(4) Duties of the Commission panel members include:

(a) Assisting the Hearing Officer by providing information concerning common standards and practices of educators in the Respondent's particular field of practice and in the situations alleged;

(b) Asking questions of all witnesses to clarify specific issues;

(c) Reviewing all briefs and evidence presented at the hearing;

(d) Assisting the Hearing Officer in preparing the hearing report.

(5) The panel members shall not receive any documents prior to the hearing except the Complaint and Response, and a list of witnesses who will participate in the hearing. The Hearing Officer may provide any documents to the panel members prior to the hearing that the parties stipulate may be provided. Unless a different time is agreed to by the parties, documents shall be provided to the panel 30 minutes prior to the hearing.

(6) The Executive Secretary may make an emergency substitution of a panel member for cause with the agreement of the parties. The agreement should be in writing but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing. If the panel cannot be filled within a reasonable time, the Executive Secretary may reschedule the hearing date.

C. Disqualification of the Hearing Officer or a panel member:

(1) Hearing Officer:

(a) A party may seek disqualification of a Hearing Officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new Hearing Officer and, if necessary, reschedule the hearing. A Hearing Officer may recuse himself from a hearing if, in the Hearing Officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice, Chapter 13.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new Hearing Officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A Commission member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that would compromise the panel member's ability to make an impartial decision.

(b) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the Hearing Officer, or the Executive Secretary if there is no Hearing Officer, which request shall be received not less than 15 days before a scheduled hearing. The Hearing Officer, or the Executive Secretary, if there is no Hearing Officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the Hearing Officer shall, if necessary, reschedule the hearing.

(c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Hearing Officer, or the Executive Secretary if there is no Hearing Officer, to replace the panel member.

(d) If a disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall agree upon a replacement and the Hearing Officer shall, if necessary, reschedule the hearing.

(e) The decision of the State Superintendent is final.

(f) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the Hearing Officer fails to meet the time

requirements, the request or appeal shall be approved.

E. The Executive Secretary may, at the time he selects the Hearing Officer or panel members, select alternative Hearing Officers or panel members following the process for selecting those individuals.

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 30 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the panel members, and the name of the Hearing Officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 20 days before the date of the hearing, the Respondent and the Complainant shall serve the following upon the other party and submit a copy and proof of service to the Hearing Officer:

(1) A brief, if requested by the Hearing Officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.

C. If a party fails to comply in good faith with a directive of the Hearing Officer under Section R686-100-7A, including time requirements for service, the Hearing Officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this section prevents the use of rebuttal witnesses.

D. Parties shall provide materials to the Hearing Officer, panel members and Commission as directed by the Hearing Officer.

R686-100-8. Hearing Parties' Representation.

A. Complainant: The Complainant shall be represented by a person appointed by the State Superintendent or his designee.

B. Respondent: A Respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the Respondent.

R686-100-9. Discovery Prior to a Hearing.

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed Hearing Officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the Hearing Officer at his discretion or upon a motion by either party. The Hearing Officer rules on all discovery requests and motions.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(c) if requested by either party at least five working days prior to the hearing.

E. Either party may request the names of witnesses the opposing party expects to call at the hearing and to receive a copy of or examine all documents and exhibits that the opposing party intends to use as evidence during the hearing.

F. Except as provided in R100-7C, no witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least 10 days prior to the hearing. The timeliness requirement may be waived by agreement of the parties or by the Hearing Officer upon a showing of good cause or the Hearing Officer's determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony, where required, cannot reasonably be anticipated before the time of the hearing.

G. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to Commission proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to the Commission in reaching a decision.

E. The Hearing Officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R686-100-11. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the Hearing Officer. The Hearing Officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-100-12. Hearing Record.

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may, at their own expense, make recordings of the proceedings with notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

E. The Office record of the proceedings may be

reviewed upon request of a party under supervision of the Executive Secretary and only at the Office.

R686-100-13. Expert Witnesses in Commission Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the Hearing Officer and the opposing party at least 15 days prior to the hearing date.

B. The Hearing Officer may appoint any expert witness agreed upon by the parties or of the Hearing Officer's own selection. An expert so appointed shall be informed of his duties by the Hearing Officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The Hearing Officer may not exclude evidence solely because it is hearsay.

B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

D. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the Hearing Officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the Respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the Respondent's presence. If the Hearing Officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the Respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the Hearing Officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The Respondent may not be present during the child's testimony;

(c) The Hearing Officer shall ensure that the child cannot hear or see the Respondent;

(d) The Respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the Hearing Officer determines that the testimony of a child shall be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

E. On his own motion or upon objection by a party, the Hearing Officer:

(1) May exclude evidence that the Hearing Officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

F. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:

(a) conviction of a felony;

(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(c) an investigation of an educator's license, certificate

or authorization in another state; or

(d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

I. The Executive Secretary may return a Hearing Report to a Hearing Officer if the Report is incomplete, unclear, or unreadable.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the Hearing Officer, the Hearing Officer shall sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent, if available;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: the hearing report shall indicate that Respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning to the Respondent. A letter of warning:

(i) shall be maintained permanently in Respondent's paper licensing file;

(ii) shall be mailed to Respondent or, if Respondent is represented by counsel, to Respondent's counsel;

(iii) shall state that the letter does not affect Respondent's license status;

(iv) shall not be noted on Respondent's active CACTUS file;

(v) shall not be copied and mailed to the Respondent's employing school district, although the employing school district shall be notified that Respondent received a warning letter;

(vi) shall not be public information, although, as a final administrative decision, the existence of the letter is public information;

(vii) shall state that a letter of warning may be considered by the Commission or the Board if formal allegations are made regarding Respondent's conduct in the future; and

(viii) may be acknowledged and summarized to prospective employers upon request.

(c) Reprimand: the hearing report shall indicate that Respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand to the Respondent. A letter of reprimand:

(i) shall be maintained permanently in Respondent's paper licensing file;

(ii) shall be mailed to Respondent or, if Respondent is represented by counsel, to Respondent's counsel;

(iii) shall state that the letter does not affect Respondent's license status;

(iv) shall be noted on Respondent's active CACTUS file for the period stated in the hearing report and until Respondent's written request for removal of the letter is granted;

(v) shall be copied and send to Respondent's employing school district;

(vi) shall not be public information, although, as a final administrative decision, the existence of the letter is public information; and

(vii) shall state that a letter of reprimand may be considered by the Commission or the Board if formal allegations are made regarding Respondent's conduct in the future; and

(viii) may be acknowledged and summarized to prospective employers upon request.

(d) It is the Respondent's responsibility to petition the Commission for removal of letters of warning and reprimand from his licensing and CACTUS files.

(e) Probation: The hearing report shall determine whether the Respondent's conduct was unprofessional, that the Respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a Respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the Respondent may work in any capacity in education during the probationary period.

A probation may be imposed substantially in the form of a plea in abeyance. The Respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be fully satisfied.

(f) Suspension: The hearing report shall recommend to the Board that the license of the Respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before Respondent may petition for reinstatement of his license. The hearing report shall indicate that, should the Board confirm the recommended decision, the Respondent shall return the printed suspended license to the Office and that the Educator Licensing Section of the Officeshall notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the suspension in accordance with R277-514.

(g) Revocation: The hearing report shall recommend to the State Board of Education that the license of the Respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the Respondent shall return any paper copies of the revoked license to the Office and that the Educator Licensing Section of the Officeshall notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the revocation in accordance with R277-514.

(5) Notice of the right to appeal; and

(6) Time limits applicable to appeal.

B. Processing the Hearing Report:

(1) The Hearing Officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the Hearing Officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The Hearing Officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of

the evidence does not support the conclusions of the hearing report, the Commission may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(5) The Executive Secretary may be present, at the discretion of the Commission, but may only participate in the Commission's deliberation as a resource to the Commission in explaining the hearing report and answering any procedural questions raised by Commission members.

(6) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the Hearing Officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(7) If the Commission determines that procedural errors or that the Hearing Officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new Hearing Officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

D. Failure to comply with the terms of a final disposition that includes a suspension or revocation of the Respondent's license may result in an additional five-year revocation of the license.

E. If a hearing officer fails to satisfy his responsibilities under this rule, the Commission may:

(1) notify the Utah State Bar of the failure;

(2) reduce the hearing officer's compensation consistent with his failure;

(3) take timely action to avoid disadvantaging either party; and

(4) preclude the hearing officer from further employment by the Board for Commission purposes.

F. Deadlines within this section may be waived by the Commission for good cause shown.

G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to final Stipulated Agreements, agreed to and signed by both parties.

R686-100-16. Default Procedures.

A. An order of default may be issued against a Respondent under any of the following circumstances:

(1) The Prosecutor may prepare an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the Respondent fails to file a response to a complaint or respond to a proffered Stipulated Agreement following written notice and telephone contact, to the extent possible, for an additional 20 days following the time period allowed for response to a complaint under R686-100-4F or G.

(2) The Hearing Officer may enter an order of default against a Respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:

(a) The Respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The Hearing Officer may determine that the Respondent has failed to attend a properly scheduled hearing if the Respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the Respondent shows good cause for failing to appear in a timely manner.

(b) The Respondent or the Respondent's representative commits misconduct during the course of the hearing process as provided under Section R686-100-8D.

B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by the Commission.

R686-100-17. Appeal.

A. Either party may appeal a final recommendation of the Commission for a suspension of the Respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that the Commission sends written notice to the parties of its recommendation.

(1) Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.

B. Either party may appeal a Commission recommendation for a suspension of less than two years or dismissal of the case to the Board following the procedures in R277-514-4B.

C. A request for appeal to the State Superintendent or the Board shall include:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

R686-100-18. Remedies for Individuals Beyond Commission Actions.

Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

R686-100-19. Application for Licensing Following Denial or Loss of License.

A. An individual who has been denied licensing or lost his license through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, at the Office mailing address, and shall have the following heading:

TABLE 1

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Jane Doe,                          ) Request for Agency Action
     Petitioner                    ) Following Denial or Loss of
     vs                            ) License
Utah State Office of Education,    ) File no.: ............
UPPAC
     The State.                   )
                                  )
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B. The body of the request shall contain:

(1) Name and address of the individual requesting review;

(2) Action being requested;

(3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;

(4) Reasons for reconsideration of past disciplinary action;

(5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of a license shall fall on the individual seeking the reinstatement.

(1) Individuals requesting reinstatement of a suspended license shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting licensing following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for licensing as if the individual had never been licensed in Utah or any other state.

(3) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

R686-100-20. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. The petitioner shall have the responsibility of presenting the background of the case.

C. The petitioner shall present documentation or evidence that supports reinstatement.

D. The State, represented by the Commission Prosecutor, shall present any evidence or documentation that would not support reinstatement.

E. Other evidence or witnesses shall be presented consistent with R686-100-14.

F. The appointed Hearing Officer shall rule on other procedural issues in a reinstatement hearing in a timely manner as they arise.

R686-100-21. Temporary Suspension of License Pending a Hearing.

A. If the Executive Secretary determines, after affording Respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges shall be proven to be correct and that permitting the Respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher licensing, conduct, hearings
November 9, 2006 53A-6-306(1)(a)
Notice of Continuation February 4, 2008

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2006 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2005 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.4 "Division" means the Division of the State Fire Marshal.

2.5 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.9 "LPG" means Liquefied Petroleum Gas.

2.10 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.11 "NFPA" means the National Fire Protection Association.

2.12 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.13 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.14 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.15 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be

furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.6 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.7 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed an apprenticeship program that teaches the installation of gas line appliances and is approved by the Federal Bureau of Apprenticeship Training, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement

for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute,

transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - $450.00

6.1.1.1.2 Class II - $450.00

6.1.1.1.3 Class III - $105.00

6.1.1.1.4 Class IV - $150.00

6.1.1.2 Branch office license - $338.00

6.1.1.3 LPG Certificate - $40.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - $20.00

6.1.1.5 Duplicate - $30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - $30.00

6.1.2.2 Re-examination - $30.00

6.1.2.3 Five year examination - $30.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - $150.00

6.1.3.2 5,000 water gallons or less of LPG - $75.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - $50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - $250.00

6.1.6 Private Container Inspection (More than one container) - $150.00

6.1.7 Private Container Inspection (One container) - $75.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-

7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels", and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and does not bear the required ASME construction stamp, the owner may submit to the Division a request for "Special Classification Permit". Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the owner. The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following section:

(A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.8.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (M) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal.

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.22.3.13 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.8 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - $210.00 to $900.00

9.1.2 Person failure to obtain LPG Certificate - $30.00 to $90.00

9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - $210.00 to $900.00

9.1.4 Concern doing business under improper class - $140.00 to $600.00

9.1.5 Failure to notify SFM of change of address - $60.00

9.1.6 Violation of the adopted Statute or Rules - $210.00 to $900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at $30.00 per

hour.

9.2.6 Triple the fee.

KEY: liquefied petroleum gas
February 21, 2008 **53-7-305**
Notice of Continuation March 30, 2006

R765. Regents (Board of), Administration.
R765-607. Utah Higher Education Tuition Assistance Program.
R765-607-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Higher Education Tuition Assistance Program ("UTAP," or "program").

R765-607-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 7, Part 5 (Utah Higher Education Tuition Assistance Program).

2.2. State Board of Regents Policy R601, Board of Directors of the Utah Higher Education Assistance Authority.

2.3. Utah Code Title 53B, Chapter 8-102, Definition of Resident Student.

2.4. Utah Code Title 53B, Chapter 8-106, Resident Tuition - Requirements - Rules.

2.5. State Board of Regents Policy R512, Determination of Resident Status.

R765-607-3. Effective Date.

These policies and procedures are effective June 21, 2007.

R765-607-4. Policy.

4.1. Program Description - UTAP is a need-based grant program to provide need-based grants at the community colleges and at centers of the Utah State University. The Program recognizes "that tuition and general fee costs to students at Utah community colleges and established branch campuses and centers represent significant challenges for many of the students they serve". Program funds may be used only for need-based grants to students attending higher education institutions as provided herein.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UTAP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Institutions Eligible to Participate - Eligible institutions include Snow College, Dixie State College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and Utah State University on behalf of its off-campus centers.

4.4. Students Eligible to Receive UTAP Grants - To be eligible to receive a need-based grant funded by UTAP, a student must:

4.4.1. Be a resident student of the State Of Utah under Utah Code Section 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in a degree, diploma, or certificate program at the community college entity (specific campus or extension of the specific campus) for which the UTAP grant fund is established, or at a branch campus or center of Utah State University for receipt of a grant from the University's UTAP grant fund.

4.4.3. Be in the first term of the student's enrollment at the institution or be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Initial Allocation of Appropriated Funds - Money appropriated to the program for a specific fiscal year, plus any remaining balance at the end of the preceding fiscal year, shall be allocated to eligible institutions as follows:

4.5.1. Fifty percent of the amount available for allocation each fiscal year shall be allocated in equal proportions to:

4.5.1.1. Snow College, for its main campus and extensions;

4.5.1.2. Dixie State College, for its main campus and extensions;

4.5.1.3. College of Eastern Utah, for its main campus and extensions of the main campus;

4.5.1.4. College of Eastern Utah, for its San Juan Campus and extensions of the San Juan Campus;

4.5.1.5. Utah Valley State College, for its main campus and extensions;

4.5.1.6. Salt Lake Community College, for its Taylorsville Campus and extensions of the Taylorsville Campus; and

4.5.1.7. Salt Lake Community College, for its South City Campus and extensions of the South City Campus.

4.5.2. Fifty percent of the amount available for allocation each fiscal year shall be allocated to the Utah State University for its instructional centers at Roosevelt, Blanding, Randolph, Price, Moab, Brigham City, Tooele, Richfield, and Ephraim, and such other centers as UHEAA may determine.

4.5.3. Individual Award Limits -- The total amount of any UTAP grant award to an eligible student in an award year will not exceed $2,500, and the minimum UTAP grant award to an eligible student will be $250, except that:

4.5.3.1. The minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UTAP grant award for the year; and

4.5.3.2. An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s), or other defined term for which the student is enrolled.

4.6. Institution Participation Agreement -- Participating institutions shall provide a statement that the institution agrees to maintain appropriate financial records, and records regarding the determination of grant awards to qualifying students, and to make such records available upon request for review by UHEAA or State Board of Regents officers or auditors for a period of three years after the applicable transaction dates.

4.6.1. Program Rosters -- Each eligible institution shall, at the conclusion of the awarding cycle, no later than 30 days after the end of the fiscal year, provide UHEAA with a roster of the eligible students who received funds.

4.7. Three Years to Use Allocations -- An eligible institution which receives funds in a fiscal year shall have that

fiscal year and the two following fiscal years to award the funds to eligible students. If, by the end of the three-year period, the funds from the first fiscal year have not been awarded to eligible students, the funds shall be returned to the pool of program money available for allocation for the following fiscal year.

4.8. Investment of Program Funds - Funds appropriated for the program shall be invested by UHEAA with the State Treasurer's Public Treasurer Investment Fund, and interest earned prior to disbursement for qualifying proposals shall be retained in the program fund and added to the pool available for allocation in the following fiscal year.

4.9. Disbursement of Funds - UHEAA shall promptly disburse the allocated funds to the institution as soon after July 1 of each Fiscal Year as the funds become available for disbursement.

KEY: financial aid, higher education
August 22, 2007 **53B-7-501**
Notice of Continuation February 8, 2008 **53B-7-502**

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be

by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence, facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed

to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,
2. the revenue laws of the state of Utah, and
3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or
2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that

no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:
Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;
b) Appeals;
c) Economic and Statistical; and
d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;
b) Taxpayer Services;
c) Motor Vehicle;
d) Auditing;
e) Property Tax;
f) Technology Management;
g) Processing; and
h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;
2. management of the day to day relationships with the customers of the agency;
3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;
4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;
5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;
6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;
7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and
8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;
2. the strategic plan of the agency;
3. administrative rules and bulletins;
4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;
5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;
6. stipulated or negotiated agreements that dispose of matters on appeal; and
7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;
2. adjudicative proceedings;
3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
4. internal audit processes;
5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging

information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, 63-46b-14, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(3) A petition for redetermination filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

(1) At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

(a) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(b) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(c) If more than one commissioner or administrative law judge is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(2) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon

agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.

(1) A prehearing, scheduling, or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The prehearing, scheduling, or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(ii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iii) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

(1) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or

defense in the appeal.

(2) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is

not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-41. Date of Assessment Pursuant to Utah Code Ann. Sections 59-1-302.1 and 59-1-706.

(1) Except as provided in Subsections (2) and (3), "assessment date" means the date the tax liability is posted to the records of the commission.

(2) For purposes of a tax liability determined through an audit and for which a notice of deficiency has been mailed to the taxpayer, "assessment date" means:

(a) if a petition for redetermination has not been filed, the date:

(i) 30 days after a notice of deficiency has been mailed to the taxpayer;

(ii) 90 days after a notice of deficiency has been mailed to the taxpayer if the notice is addressed to a person outside the United States or District of Columbia; or

(iii) the taxpayer agrees with the commission, in writing, on the existence and amount of a tax liability, and consents to the assessment of the tax liability; or

(b) if a petition for redetermination has been filed, the date a tax liability resulting from a final commission decision is posted to the records of the commission.

(3) In the case of interest charged to a taxpayer, "assessment date" means the assessment date of the underlying tax liability.

(4) For purposes of Subsection (2), "deficiency" is defined as:

(a) provided in Section 59-7-516 in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) provided in Section 59-10-523 in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c) unless otherwise provided in statute, the amount by which the tax imposed exceeds the excess of:

(I) the sum of:

(A)(i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown on the return as the tax by the taxpayer; or

(ii) zero, if no return is filed, or the return does not show any tax; and

(B) amounts previously assessed (or collected without assessment) as a deficiency; less

(II) amounts previously abated, refunded, or otherwise repaid in respect of that tax.

(5) For purposes of Subsection (2), a notice of deficiency shall:

(a) be mailed by the commission as provided in Subsection 59-7-517(1)(a) in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) be mailed by the commission as provided in Subsections 59-10-524(1) and (2) in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c)(i)(A) unless otherwise required by statute, be mailed to the taxpayer at the taxpayer's last-known address if the commission determines that there is a deficiency in a tax; and

(ii) set forth the details of the deficiency and the manner of its computation.

(6) The commission may, at any time within the period prescribed for assessment, make a supplemental assessment if it is ascertained that an assessment is imperfect or incomplete in any material respect.

(7) The provisions of this rule apply to all taxes and fees collected by the commission unless otherwise provided by statute.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable

cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63, Chapter 46b, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer. (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate

that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

The commission may convene an electronic meeting if all of the following conditions are met:

(1) the purpose of the meeting is to discuss a commission administrative rule;

(2) two commissioners are present at a single anchor location; and

(3) the number of separate connections for commissioners who are not present at the anchor location is no more than two.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

February 25, 2008
Notice of Continuation March 20, 2007

10-1-405
41-1a-209
52-4-207
59-1-205
59-1-207
59-1-210
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59-1-304
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59-1-706
59-1-1004
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59-10-535
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59-2-1004
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63-46a-4
63-46b-1
76-8-502
76-8-503
59-2-701
63-46b-3
63-46b-4
63-46b-5
63-46b-6
63-46b-7
through
63-46b-11
63-46b-13
63-46b-14
63-46b-21
63-46a-3(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other

public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of

a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(a) Nonbusiness income means all income other than business income and shall be narrowly construed.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

(c) Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(i) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Subsection (7)(a)(i).

(ii) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See Subsection (7)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

(v) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(vi) A schedule must be submitted with the return showing:

(A) the gross income from each class of income being allocated;

(B) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) the total amount of the applicable expenses for each income class; and

(D) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

(vii) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(viii) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(2) Definitions.

(a) "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" means the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

(e) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that

are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

(3) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) Except as provided in Subsection (3)(a)(ii)(B), if a taxpayer does not make an election to double weight the sales factor under Subsection 59-7-311(3) and one or more of the factors listed in Subsection 59-7-311(2)(a) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer has made an election to double weight the sales factor under Section 59-7-311(3) and if the sales factor is present, the denominator of the fraction described in Subsection (3)(a)(ii)(A) shall be increased by one.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(4) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(5) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(6) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (7), the payroll factor, see Subsection (8), and the sales factor, see Subsection (9) of the trade or business of the taxpayer. For exceptions see Subsection (10).

(7) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (7)(f).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or

business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (10)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000

February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (7)(f)(i).

(8) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(i) The term "employee" means:

(A) any officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(ii)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(e) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(f) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(iv) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales Factor. In General.

(a) Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be

included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (10)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (10)(c).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (9)(e) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f) Sales Other than Sales of Tangible Personal Property in this State.

(i) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of

real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

(10) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;

(ii) the exclusion of any one or more of the factors;

(iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(c) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (9)(a)(i), and income from the sale, licensing or other use of intangible personal property, see Subsection (9)(f)(ii)(D).

(A) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (10)(c)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (10)(c)(iv). This Subsection (10)(c)(iv) does not provide rules relating to

the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (10)(c)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (10)(c)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(d) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(e) Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),

b. depletion,

c. exploration and development expenses,

d. intangible drilling costs,

e. accounting methods and periods (see rule R865-6F-2), and

f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),

b. consolidated returns (see rule R865-6F-4),

c. liquidating dividends,

d. municipal bond interest,

e. capital loss deduction,

f. loss carry-overs and carry-backs, and

g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from

sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

(6) The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

(7) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred

until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (7)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (7)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (7)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865- 6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with

R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or (d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after

December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" in the case of a business firm that is a member of a unitary group, does not include an investment made by that business firm in plant, equipment, or other depreciable property of another member of the unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

H. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

I. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8),and the sales factor in accordance with R865-6F- 8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to

identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(10)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of

the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The Tax Commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within

this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the Tax Commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(9) and (10).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in

the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were

actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

(c) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8) and the sales factor in accordance with R865-6F-8(9).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(7).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

(1) For purposes of Section 59-7-703(2)(b)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by:

(a) adding back to the line on the Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions; and

(ii) total foreign taxes paid or accrued.

(b) If the S corporation was not required to complete the line labeled "Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(2) The amount that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

(a) The deduction shall be equal to 15 percent of the Utah income attributable to nonresident shareholders.

(b) The deduction in Subsection (2)(a) shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

(3) The tax shall be computed using the maximum Utah

individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under Subsection (2).

(4) An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

(a) name;

(b) social security number;

(c) percentage of S corporation held; and

(d) amount of Utah tax paid or withheld on behalf of that shareholder.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

(i) for which the broker or dealer does not take title; and

(ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

KEY: taxation, franchises, historic preservation, trucking industries

February 25, 2008
Notice of Continuation March 8, 2007

9-2-401
through
9-2-415
16-10a-1501
through
16-10a-1533
53B-8a-112
59-1-1301 through 59-1-1309
59-6-102
59-7-101
59-7-102
59-7-104
through
59-7-106
59-7-108
59-7-109
59-7-110
59-7-112
59-7-302
through
59-7-321
59-7-402
59-7-403
59-7-501
59-7-502
59-7-505
59-7-601
through
59-7-614
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint

federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state

taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax

Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;
2. the employer's Utah withholding tax account number;
3. the amount of compensation;
4. the amounts of federal and Utah state income tax withheld;
5. the social security number of the employee;
6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and
7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or
2. withholds less than $1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of $1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.
2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

(b) The Utah portion may be shown:

(i) alongside the total for each item on the federal schedules K and K-1; or

(ii) on an attachment to the Utah return.

(3) A partnership, all of whose partners are resident individuals, shall satisfy the requirement to file a return with the commission by:

(a) maintaining records that show each partner's share of income, losses, credits, and other distributive items; and

(b) making those records available for audit.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be

signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414.

(1) Definitions:

(a) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(b) "Construction work" does not include facility maintenance or repair work.

(c) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(d) "Public utilities business" means a public utility under Section 54-2-1.

(e) "Transfer" pursuant to Section 63-38f-411, means the relocation of assets and operations of a business,

including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if:

(a) The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

(b) The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

(3) The calculation of the number of full-time positions for purposes of the credits allowed under Section 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(4) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

(5) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(6) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(7) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(8) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-9I-39. Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501.

A. A taxpayer that claims the deduction from income for a dependent child with a disability or an adult with a disability allowed under Section 59-10-114 shall complete form TC-40D, Disabled Exemption Verification, as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and

2. retained by the taxpayer.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-108.5 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

E. Upon issuing a certification number under D., the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63-38f-413.

Taxpayers shall deduct credits authorized by Sections, 59-6-102, 59-13-202, Title 59, Chapter 10, and 63-38f-413 against Utah individual income tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but

shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah

sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;
2. the amount contributed to the account;
3. the account's earnings;
4. distributions for qualified medical expenses;
5. distributions for non-medical expenses not subject to penalty;
6. distributions for non-medical expenses subject to penalty;
7. the amount of penalty required to be withheld and remitted to the state;
8. the account administrator's administrative fee charged to the account; and
9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;
2. fees paid to reimburse the state under Section 35A-3-308;
3. fees paid to an attorney or placement service for arranging the adoption;
4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and
5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;
2. foster care expenses incurred prior to the application for adoption; or
3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-9I-50. Addition to Federal Taxable Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to federal taxable income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

A. interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

B. for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-9I-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

(a) of any change of address of the business;
(b) of a change of character of the business, or
(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;

(c) the person fails to renew its annual business license with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-9I-52. Subtractions For Health Care Insurance and For Premiums For Long-Term Care Insurance Pursuant to Utah Code Ann. Section 59-10-114.

A subtraction from federal taxable income under Subsection 59-10-114(2) for health care insurance and for premiums for long-term care insurance shall be determined in the manner that provides the greatest possible subtraction under Subsection 59-10-114(2).

R865-9I-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-9I-54. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Sections 59-10-1014 and 59-10-1106.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Sections 59-10-1014 or 59-10-1106 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under those sections.

KEY: historic preservation, income tax, tax returns, enterprise zones
February 25, 2008 **31A-32A-106**
Notice of Continuation March 20, 2007 **53B-8a-112**
59-1-1301 through 59-1-1309
59-2-1201
through
59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-405.5
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
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59-10-603
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59-10-1106
59-13-202
59-13-302
63-38f-401 through 63-38f-414

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;

2. of a change of character of the business, or

3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

B. If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

C. If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

D. Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah

Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the

requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle

pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio

and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or

businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made

up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales

of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and

does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's

tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

(a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

(b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

(2) Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

(4) If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access

to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) repair telephone equipment that retains its character as tangible personal property.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to repair subscriber equipment that is regarded as real property;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and

7. charges for one-way pager services.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

B. The sale, rental or lease of prewritten computer

software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that

methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and

2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;

2. the volume of taxable energy delivered to the user; and

3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and

2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.

A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.

The amount of purchases or uses exempt under Sections 59-12-104(14) and 59-12-104(51) shall be reported to the commission by the person that purchases the items exempt from sales or use tax under those subsections.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;

2. television program; or

3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;

2. boarding services; or

3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and

2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and

2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, Aircraft, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Except as provided in Subsections (3) and (4), the provisions of this rule apply to the imposition of sales and use tax under Section 59-12-103 on amounts paid or charged as admission or user fees by jeep, snowmobile, aircraft and boat tour operators, river runners, outfitters, and other sellers providing similar services.

(3) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (3) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(4) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

(5) If payment for a service provided by a seller described in (2) occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(6) If payment for a service provided by a seller described in (2) occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(7) If payment for a service provided by a seller described in (2) occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.

(8) Payment occurs in Utah if the purchaser:

(a) while at a business location of the seller in the state, presents payment to the seller; or

(b) does not meet the criteria under (8)(a) and is billed for the service at an address within the state.

(9) For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in (2) occurs in Utah.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:

1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;

17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:
1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and
5. sewing materials that become part of clothing, including:
a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:
A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:
A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:
1. carried to the third place; and
2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:
1. item basis; or
2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:
1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:
1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The provisions of this rule apply to a seller that:
1. is not a restaurant; and
2. provides a purchaser both food and lodging.

B. If a seller does not separately state an amount for tax applicable to food on the invoice, the seller must:
1. pay sales and use tax on the food at the time the seller purchases the food; and
2. include the food in the base that is subject to transient room tax.

C. Subject to D., if a seller separately states an amount for tax applicable to food on the invoice, the seller:

1. may purchase the food tax exempt from sales and use tax as a sale for resale; and

2. may not include the food in the base that is subject to transient room tax.

D. A seller that separately states an amount for tax applicable to food on the invoice must ensure that those amounts are accurately reflected in the seller's records.

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;

(b) buildings;

(c) raw materials;

(d) supplies;

(e) film;

(f) services;

(g) transportation;

(h) gas, electricity, and other fuels;

(i) admissions or user fees; and

(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

KEY: charities, tax exemptions, religious activities, sales tax

February 25, 2008
Notice of Continuation March 13, 2007

9-2-1702
9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

A. To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

1. the last certificate of registration;

2. a lien search from the recording jurisdiction or an "Affidavit of Ownership" in lieu of the lien search.

B. To title or register a repossessed vehicle, an applicant must submit both of the following:

1. the outstanding certificate of title, with the lien recorded in favor of the repossessor;

2. an approved affidavit of repossession, signed by the lien holder recorded on the certificate of title.

C. To title or register a vehicle previously owned by the U.S. Government, an applicant must submit a Certificate of Release of a Motor Vehicle, Standard Form No. 97.

D. To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

1. a certificate of sale bearing the notarized signature of the person who conducted the sale. The certificate must contain the following information:

a. date of sale;

b. name of person to whom the vehicle was sold;

c. complete description of the vehicle;

d. amount due on the contract;

e. date that the amount due became delinquent; and

f. amount received from the sale of the vehicle.

2. a copy of the notice sent to the owner and lien holder of record;

3. proof that notice was published two consecutive weeks prior to sale. If the notice was not published in a newspaper, an affidavit of posting of notices must be furnished. Posting must be at least ten days prior to sale.

E. To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

1. a certified copy of the divorce decree;

2. the outstanding certificate of title;

3. the last registration certificate.

F. To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

1. the outstanding certificate of title, endorsed for transfer by the guardian;

2. the last registration certificate;

3. a certified copy of the court order appointing the guardian.

G. To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

1. legal basis under which the vehicle was impounded and sold:

2. a complete description of the vehicle;

3. name of the purchaser;

4. the notarized signature of the state, city, or county official who conducted the sale.

H. To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the properly notarized power of attorney to the Tax Commission.

I. To title or register a vehicle transferred from a deceased owner when a survivorship affidavit is not applicable, the applicant must submit the outstanding certificate of title and the last registration card. In addition, the applicant must submit one of the following:

1. a certified copy of the final decree of distribution;

2. an order from the court confirming sale;

3. an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

a. When the title is issued in joint ownership where the owners names are connected with "and" or a "/" the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

J. The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:

a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

b) an explanation of how the vehicle was obtained and from whom;

c) a statement indicating any outstanding liens or encumbrances on the vehicle;

d) a statement indicating where the vehicle was last titled or registered;

e) a description of the vehicle;

f) any other items pertinent to the acquisition or possession of the vehicle.

2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:

a) the vehicle is not a motorcycle;

b) the vehicle has a value of $1,000 or less at the time of application;

c) the vehicle is six model years old or older.

3. If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is not more than six model years old, or the vehicle is a motorcycle, a title or dismantle permit may not be issued until the vehicle is physically examined by a qualified investigator appointed by the Tax Commission.

4. If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the affidavit. The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

K. To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish an affidavit of construction, explaining the acquisition of essential parts and the date construction was completed. The affidavit must be supported by bills of sale or invoices for the parts.

1. An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

2. The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

3. If satisfactory evidence of ownership is lacking, the procedure outlined in J. shall be followed.

4. In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

5. The rebuilt vehicle shall retain the manufacturer's

name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a- 214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

A. A lienholder who lawfully repossesses a vehicle may apply for a certificate of title by paying the title fee and filing all of the following documents:

1. the outstanding Utah certificate of title showing the lien recorded;

2. a notarized affidavit of repossession, signed by the lienholder of record;

3. an application for title, properly signed and notarized.

B. If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

1. the outstanding Utah certificate of title showing a release of all prior liens;

2. an application for title, properly signed and notarized;

3. the title fee.

C. In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

1. the outstanding Utah certificate of title with the lien recorded;

2. an application for title showing the registered owner and the new lienholder;

3. the title fee.

D. In lieu of the required owner's signature under Subsection C.2., the application may be stamped "Assignment of Lien Pursuant to Section 41-1a-607."

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-

112.

A. "Aircraft" is as defined in Section 72-10-102.

1. Aircraft includes fixed wing airplanes, balloons, airships, and any other contrivance subject to the registration requirements of the Federal Aviation Administration (FAA).

2. Aircraft does not include ultralight vehicles or hang gliders.

B. For purposes of this rule, all aircraft that meet requirements for registration by the FAA are subject to annual registration in this state. FAA registration documents must be made available for review at the time application for state registration is made.

C. The registration period is from January 1 through December 31. Newly purchased aircraft and aircraft moved to Utah from another state shall be registered immediately. A grace period to January 31 is allowed for renewal registrations.

D. A registration fee shall be collected at the time of registration. This fee shall be paid every time the registration changes and every time the registration is renewed.

E. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the registration fee shall be prorated based on the number of months remaining in the registration period.

1. For Purposes of determining the number of months remaining in the registration period, the month during which the aircraft is originally registered shall be considered a full month.

2. For example, if an aircraft is newly registered in Utah on July 31, 50 percent of the registration fee shall be paid at the time of original registration.

F. Aircraft assessed as part of an airline by the Tax Commission are exempt from the registration requirements of Section 72-10-109. Aircraft centrally assessed by the Tax Commission and not part of an airline remain subject to taxation as property and are subject to the registration requirements of Section 72-10-109.

G. Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.

H. The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

I. The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,

2. dismantled vehicle,

3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;

4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and

5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-23. Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209.

A. The registration information update for vintage vehicle plates required by Section 41-1a-1209 shall be due on July 1, 1995, and every five years thereafter.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:

a) cracks or chips in windows if the vehicle will pass a safety inspection;

b) paint chips or scratches that do not extend below the rust preventive primer coating;

c) decals or decorative paint;

d) decorative molding and trim made from plastic, light metal, or other similar material;

e) hood ornaments;

f) wheel covers;

g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;

h) vinyl roof covers or imitation convertible tops;

i) rubber inserts in bumpers or bumper guards; and

j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.

2. Cosmetic repairs do not include:

a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;

b) repair or replacement of any sheet metal;

c) repair or replacement of exterior or interior body panels;

d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and

e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;

2. Motor Estimating Guide;

3. Delmar Auto Series Complete Automotive Estimating;

4. CCC Autobody Systems EZEst Software;

5. ADP Collision Estimating Services; or

6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and

2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.

2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by five characters. The first four characters shall be numbers and the fifth shall be a letter.

(2) (a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3) (a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9) (a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11) (a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has notified the individual described in Subsection (11)(b)(i) that the license plate will be revoked.

(12) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-419.

The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420.

(1) A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

(b) an identification number;

(c) a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

(d) a facsimile of the Great Seal of the State of Utah.

(2) Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

(a) The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

(b) An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

(c) A physician's certification is not required for renewal of a removable windshield placard.

(d) The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(e) The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(3) A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

(b) an identification number;

(c) a date of expiration not to exceed six months from the date of issuance; and

(d) a facsimile of the Great Seal of the State of Utah.

(4) Upon application, a temporary removable windshield placard shall be issued.

(a) The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(b) Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

(c) The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(d) The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(5) Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-31. Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102.

A. The division shall maintain a list of all vehicles currently eligible for classification as special interest vehicles.

1. A request for the classification of a vehicle as a special interest vehicle shall be approved if the vehicle is on the list.

2. If a vehicle not on the list qualifies for classification as a special interest vehicle pursuant to Section 41-1a-102, the division director shall add that vehicle to the list.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-422.

(1) "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-422 and that issues a standard collegiate degree.

(2) "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

(1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

(2) Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

(c) Combinations of letters, words, or numbers that connote:

(i) any intoxicant or any illicit narcotic or drug;

(ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or

(iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.

(d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

(e)(i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:

(A) illegal activity;

(B) organized crime associations; or

(C) gang or gang terminology.

(iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

(4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

(a) translation from foreign languages;

(b) an upside down or reverse reading of the requested format; and

(c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

(5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection R873-22M-34(1), the division shall again review the format.

(8) If the division determines pursuant to Subsection R873-22M-34 (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle

mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-37. Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211.

A. In the absence of a designation of one of the standard issue license plates at the time of the license plate transaction, the license plate provided shall be the statehood centennial license plate.

B. Any exchange of one type of standard issue license plate for the other type of standard issue license plate shall be subject to the plate replacement fee provided in Section 41-1a-1211.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

KEY: taxation, motor vehicles, aircraft, license plates
February 25, 2008
Notice of Continuation March 12, 2007

41-1a-102
41-1a-104
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-401
41-1a-402
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418
41-1a-419
41-1a-420
41-1a-421
41-1a-422
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1009 through 41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399 and Part 40, as contained in the October 1, 2007 Code of Federal Regulations, is incorporated by reference, except for Parts 391.11(b)(1) and 391.49. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and UCA 72-9-102(2) engaged in commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

R909-1-2. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of $750,000 liability.

R909-1-3. Implements of Husbandry.

"Implements of Husbandry" is defined in Utah Code Ann. Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

KEY: trucks, transportation safety, implements of husbandry

February 15, 2008	**72-9-103**
Notice of Continuation November 29, 2006	**72-9-104**
	72-9-101
	72-9-301

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6-102, Utah Code.

R909-19-2. Applicability.

All tow trucks motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6-101, 41-6-102, 41-6-104, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or it's legal operator's, knowledge and/or approved.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(7) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(8) "Personal Property" means articles associated with a person, as property having more or less intimate relation to person, including clothing, medicine, tools, home/family etc. Items not considered as personal property are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle-stereos, speakers, or CD changers and will remain in the vehicle.

(9) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(10) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(11) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(12) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repo towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(13) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Tow Vehicle Classifications will be used when determining authorized fees. Information regarding the (GVWR) to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(1) "Light Duty" means any towed vehicle with a (GVWR) 10,000 pounds or less;

(2) "Medium Duty" means any towed vehicle with a (GVWR) between 10,001 and 26,000 pounds;

(3) "Heavy Duty" means any towed vehicle with a (GVWR) or (GCWR) 26,001 pounds and greater.

(14) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

All tow trucks will be required to carry at least $750,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers. Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or investigator upon request and prior to tow truck carrier certification. The Tax Commission requires all Tow Yards to carry insurance on stored vehicles.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) issuance of a cease-and-desist order as authorized by section 72-9-303; and

(c) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).

R909-19-7. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603(1).

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as authorized by 41-6-102.5.

(d) If reporting is not completed within the time frame, the Tow Truck Motor Carrier or operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.

R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

All Tow Truck Motor Carriers must follow notification procedures as required by 72-9-603 and input required information in electronic form on the Department's website, at www.tow.utah.gov.

R909-19-9. Certification.

There are three (3) required certification requirements required by the Department, they are as follows:

(1) Tow Truck Driver Certification:

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards. These standards of conduct and proficiency may be tested and certified through:

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program

(iv) Other driver testing certification programs may be approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4559.

(b) Information on the above mentioned certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4559.

(c) Tow Truck Motor Carriers shall ensure that all driver's are:

(i) Properly trained to operate tow truck equipment;

(ii) Licensed, as required under UCA 53-3-101, Uniform Driver License Act; and

(iii) Property certified.

(2) Tow Truck Vehicle Certification:

(a) All tow trucks shall be inspected and certified biannually;

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at http://www.udot.utah.gov/index.php/m=c/tid=396 or by calling 801-965-3871.

(c) Upon certification of vehicle a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT vehicles inspection certification shall be kept in the vehicle file and available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification:

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-10. Certification Fees.

The Department may charge Tow Truck Motor Carrier's a fee biannually as authorized by Section 72-99-603(1) to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-11. Certification from a Qualified Training Facility.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;
(b) address;
(c) phone number;
(d) transportation and storage fees charged;
(e) name of company driver;
(f) unit number;
(g) license plate of the towed vehicle;
(h) make, model, and year of the towed unit, and;
(i) start and end time for services provided.

R909-19-12. Maximum Towing Rates. Non-Consent Tows.

(1) $121 per hour, per unit, when towing a "Light Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(2) $200 per hour, per unit, when towing a "Medium Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(3) $250 per hour, per unit, when towing a "Heavy Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require

the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) As fuel increases .50 per gallon from the base rate of $2.00, a surcharge shall be allowed of 10% of the base rate. Conversely, if prices drop, they will decrease by the same amount.

TABLE

(a) Fuel Surcharge

Fuel Cost	Surcharge
$2	0%
$2.50	10%
$3	20%
$3.50	30%
$4	40%
$4.5	50%
$5	60%
etc.	

(6) Recovery charges, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(7) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Tow Truck Lighting 41-6a-161. Strobe lights are not allowed on Tow Trucks. The acceptable light colors are orange and yellow.

R909-19-13. Maximum Non-Consent Impoundment Rates.

(1) The maximum rate for a "Light Duty" vehicle is $110.

(2) The maximum rate for a "Medium Duty" vehicles is $200.

(3) The maximum rate for a "Heavy Duty" vehicle is $250.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Non-Consent Tows.

(1) $15 Maximum per day, per unit, for outside storage of "Light Duty" vehicles;

(2) $20 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) $35 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles;

(4) $70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) $100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) $150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-15. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-16. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603(6), a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-17. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a

commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-18. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-20. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issued related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the Motor Carrier Division office.

R909-19-21. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

R909-19-22. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-23. Information to be Included on Company's Receipt.

Charges for services provided must be listed and itemized on a receipt and provided t the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.

R909-19-24. Personal Property.

Property, which is deemed, as personal property shall be given to the property owners of the vehicle regardless of payment for rendered services.

KEY: safety regulations, trucks, towing, certifications
February 12, 2008
Notice of Continuation September 25, 2006

41-6-101
41-6-102
41-6-104
53-1-106
53-8-105
63-38-3.2
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client

has attended the meeting.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving

assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find

employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by $100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the $100 reduction month, financial assistance will be terminated beginning the month following the $100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be

ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated,

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Parents in a FEPTP household who are refugees are not restricted to those activities on the approved priority or eligible activities list for the first three months of FEPTP eligibility but the parents are still required to participate for a combined total of 60 hours per week.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $450 for rent on April 1 and requests an additional EA payment of $300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $450 per family for one month's rent payment or $700 per family for one month's mortgage payment, and $300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential

lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source

for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual

does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

KEY: family employment program
February 26, 2008 35A-3-301 et seq.
Notice of Continuation September 14, 2005

R994. Workforce Services, Unemployment Insurance.
R994-508. Appeal Procedures.
R994-508-101. Right to Appeal an Initial Department Determination.

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;
(b) the right to be represented at the hearing;
(c) the right to request an in-person hearing;
(d) the legal issues to be considered at the hearing;
(e) the procedure for submitting written documents;
(f) the consequences of not participating;
(g) the procedures and limitations for requesting a continuance or rescheduling; and
(h) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of

discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less intimidating;

(c) it is not unduly burdensome;

(d) it is necessary for the parties to properly prepare for the hearing; and

(e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

(a) reschedule the hearing to another time;

(b) allow the parties time to review the documents at an in-person hearing;

(c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are usually scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing.

(2) If a party prefers an in-person hearing, the party must contact the ALJ assigned to hear the case and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction

or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might effect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-121. Correction of Error and Augmentation of the Record.

A party may request correction of an ALJ decision if the request is made in writing and filed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Utah Code Subsections 35A-4-406(2) and 35A-4-406(3) unless the Board has accepted an appeal. If the ALJ agrees to grant the request for correction, a new decision will be issued and new appeal rights to the Board will be established. If the ALJ denies the request, the request will be treated as an appeal to the Board.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Attorney Fees.

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless

the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Attorney's Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board my remand the case to the Department or the ALJ when appropriate. (5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-306. Reconsideration of a Decision of the Board.

A party may request reconsideration of a decision of the Board in accordance with Utah Code Subsection 63-46b-13.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

KEY: unemployment compensation, appellate procedures
February 15, 2008 **35A-4-508(2)**
Notice of Continuation June 11, 2003 **35A-4-508(5)**
35A-4-508(6)
35A-4-406
35A-4-103