R23. Administrative Services, Facilities Construction and Management.
R23-26. Dispute Resolution.
R23-26-1. Purpose and Scope.

(1) The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. The objectives of the procedure are to:

(a) encourage the payment of the appropriate and fair amount on a timely basis for work or services performed;

(b) encourage the resolution of issues on an informal basis in order to minimize Disputes and Claims;

(c) encourage fair and timely settlement of Claims;

(d) provide a process that is as simple as possible and minimizes the costs to all parties in achieving a resolution;

(e) maintain effective contractual relationships and responsibilities;

(f) when possible, resolve related issues and responsibilities as a package;

(g) discourage bad faith, frivolous or excessive Claims;

(h) avoid having Claims interfere with the progress of the work;

(i) assure that the presentation of good faith and non-frivolous issues and Claims do not negatively affect selection processes for future work, while bad faith and frivolous issues, as well as the failure of a Contractor or Subcontractor to facilitate resolution of issues, may be considered in the evaluation of the Contractor or Subcontractor; and

(j) provide a process where Subcontractors at any tier, which have a Claim that involves a good faith issue related to the responsibility of the Division or anyone for whom the Division is liable, has the ability to present the matter for resolution in a fair and timely manner to those of any higher tier and ultimately to the Division without creating any contractual relationship between the Division and the Subcontractor at any tier.

(2) This rule does not apply to any protest under Section 63G-6-801.

(3) A Claim under this rule that does not include a monetary claim against the Division or its agents is not limited to the dispute resolution process provided for in this rule.

(4) Persons pursuing Claims under the process required by this rule:

(a) are bound by the decision reached under the process unless the decision is properly appealed; and

(b) may not pursue a Claim under the dispute resolution process established in Sections 63G-6-805 through 63G-6-814.

(5) This rule does not apply to tort or other claims subject to the provisions of the Utah Governmental Immunity Act.

(6) This rule shall not limit the right of the Division to have any of its issues, disputes or claims considered in accordance with the applicable contract or law.

R23-26-2. Authority.

(1) The rule is authorized pursuant to Subsection 63A-5-208(6) and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.

R23-26-3. Definitions.

For purposes of this rule:

(1) "Claim" means a dispute, demand, assertion or other matter submitted by a Contractor that has a contract under the procurement authority of the Division, including Subcontractors as provided for in this rule. The claimant may seek, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a "Claim." A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of this rule are followed.

(2) "Contractor" means a person or entity under direct contract with the Division and under the Division's procurement authority.

(3) "DFCM representative" means the Division person directly assigned to work with the Contractor on a regular basis.

(4) "Director" means the director of the Division, including unless otherwise stated, his/her duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 et seq. It may also be referred in this rule as "DFCM."

(6) "Executive Director" means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.

(7) "Preliminary Resolution Effort" or "PRE" means the processing of a request for preliminary resolution or any similar notice about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.

(8) "Resolution of the claim" means the final resolution of the claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.

(9) "Subcontractor" means any subcontractor or subconsultant at any tier under the Contactor, including any trade contractor, specialty contractor or consultant but does not include suppliers who provide only materials, equipment or supplies to a contractor, subcontractor or subconsultant. "Subcontractor" does not include any person or entity, at any tier, under contract with a Lessor.

R23-26-4. Procedure for Preliminary Resolution Efforts.

(1) Request for Preliminary Resolution Effort (PRE). A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division.

(2) Time for Filing. The PRE must be filed in writing with the DFCM representative within twenty-one (21) days after the Contractor knew or should have known of an event for initiating a PRE, as defined in the applicable contract. If the Division's contract does not define the event, the event shall be defined as the time at which the issue cannot be resolved through the normal business practices associated with the contract. The labeling of the notice shall not preclude the consideration of the issue by the Division. A shorter notice provision may be designated in the contract where damages can be mitigated such as delays or concealed or unknown conditions, the discovery of hazardous materials, emergency conditions, or historical or archeological discoveries.

(3) Content Requirement. The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

(a) a description of the issue;

(b) the potential impact on cost and time or other breach of contract; and

(c) an indication of the relief sought.

(4) Supplementation. Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

(a) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and

(b) After the scope of work or other factors addressing the issue are completed, the complete information, including any

impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

(5) Subcontractors.

(a) Under no circumstances shall any provision of this rule be intended or construed to create any contractual relationship between the Division and any Subcontractor.

(b) The Contractor must include the provisions of this subsection (5) in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(c) In order for a Subcontractor at any tier to be involved with the preliminary resolution process of the Division, the following conditions and process shall apply:

(i) The Subcontractor must have attempted to resolve the issue with the Contractor including the submission of a PRE with the Contractor;

(ii) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(iii) The PRE to the Contractor must meet the time, content and supplementation requirements of Section R23-26-4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(iv) The PRE submitted to the Contractor shall only be eligible for consideration in the Division's PRE process to the extent the issue is reasonably related to the performance of the Division or an entity for which the Division is liable;

(v) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the Division. In order to be eligible for Division consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The Division shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor.

(vi) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue.

(vii) The Division shall not be obligated to consider any submission which is not in accordance with this rule.

(viii) The Subcontractor may accompany the Contractor in participating with the Division regarding the PRE raised by the Subcontractor. The Division is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings.

(ix) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(6) PRE Resolution Procedure. The DFCM Representative may request additional information and may meet with the parties involved with the issue.

(7) Contractor Required to Continue Performance. Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the contract and the Division shall continue to make payments in accordance with the contract.

(8) Decision. The Division shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the Division, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Subsection R23-26-4 (5)(b) above.

(9) Decision Final Unless Claim Submitted. The decision by the Division shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with this rule.

(10) Extension Requires Mutual Agreement. Any time period specified in this rule may be extended by mutual agreement of the Contractor and the Division.

(11) If Decision Not Issued. If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

(12) Payment for Performance. Except as provided in this rule, any final decision where the Division is to pay additional monies to the Contractor, shall not be delayed by any PRE, Claim or appeal by another party. Payment to the Contractor of any final decision shall be made by the Division in accordance with the contract for the completed work. Notwithstanding any other provision of this rule, payment to the Contractor shall be subject to any set-off , claims or counterclaims of the Division. Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor. Any payment or performance determined owing by the Contractor to the Division shall be made in accordance with the contract.

R23-26-5. Resolution of Claim.

(1) Claim. If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the Division, may submit a Claim in accordance with this rule as a prerequisite for any further consideration by the Division or the right to any judicial review of the issue giving rise to the claim.

(2) Subcontractors. In order for a Subcontractor to have its issue considered in the Claim process by the Division, the Subcontractor that had its issue considered under Section 23-26-4(6) may submit the issue as a Claim by filing it with the Contractor and the Division within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The Division shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of this rule be intended or construed so as to create any contractual relationship between the Division and any Subcontractor.

(a) Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(b) The Director shall not be obligated to consider any submission which is not in accordance with this rule.

(c) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(d) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(3) Time for Filing. The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one(21) days after the decision is issued on the PRE under Subsection 23-26-4(8) above or no more than twenty-one (21) days after the decision is not issued under Subsection 23-26-4(11) above, whichever is later.

(4) Content Requirement. The written Claim shall include:

(a) a description of the issues in dispute;

(b) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(c) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(d) a specific identification of the relief sought.

(5) Extension of Time to Submit Documentation. The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

(6) Contractor Required to Continue Performance. Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the Division shall continue to make payments in accordance with the contract.

(7) Agreement of Claimant on Method and Person(s) Evaluating the Claim. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Section R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

(a) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

(b) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

(c) An arbitration process which may be binding if agreed to by the parties to the Claim;

(d) A mediator; or

(e) Any other method that best accomplishes the purpose of Section R23-26-1.

(8) Evaluation Process.

(a) No Formal Rules of Evidence. There shall be no formal rules of evidence but the person(s) evaluating the Claim shall consider the relevancy, weight and credibility of the evidence.

(b) Questions. Parties and the person(s) evaluating the Claim have the right to ask questions of each other.

(c) Investigation and Documents. The person(s) evaluating the Claim has the right to investigate and request documents, consider any claims or counterclaims of the Division, may set deadlines for producing documents, and may meet with the parties involved with the Claim together or separately as needed. Copies of submitted documents shall be provided to all parties.

(d) Failure to Cooperate. The failure of a party to cooperate with the investigation or provide requested documentation may be a consideration by the person(s) evaluating the Claim in reaching the findings in its report.

(e) Record of the Proceeding. The person(s) evaluating the Claim shall determine the extent to which formal minutes, transcripts, and/or recordings shall be made of the meetings and/or hearings and shall make copies available to all parties.

(f) Certification. The person(s) evaluating the Claim may require the certification of documents provided.

(9) Timeframe for Person(s) Evaluation the Claim and Director's Determination. The Claim shall be resolved no later than sixty (60) days after the proper filing of the Claim, which includes any extension of time approved under Section R23-26-5(5). The person(s) evaluating the Claim may extend the time period for resolution of the Claim by not to exceed sixty (60) additional days for good cause. The time period may also be extended if the claimant agrees. The person(s) evaluating the Claim shall issue to the parties a schedule providing the timeframe for the issuance of the following:

(a) a Preliminary Resolution Report including the preliminary findings regarding the Claim;

(b) the receipt of written comments concerning the preliminary report. A copy of such comments must be delivered to the other parties to the Claim within the same timeframe;

(c) a reply to written comments, which must also be delivered to the other parties to the Claim within the same timeframe; and

(d) a final report and recommendation which must be delivered to the Director and the other parties no later than seven (7) days prior to the expiration of the required timeframe for resolution of the Claim.

(10) Director's Final Resolution. The Director shall consider the final recommendation and report and issue the final resolution of the Claim, with any modifications, prior to the expiration of the required timeframe for resolution of the Claim.

R23-26-6. Administrative Appeal to the Executive Director of the Department of Administrative Services.

(1) Administrative Appeal. The Contractor may file a written administrative appeal of the final resolution of the person(s) evaluating the Claim with the Executive Director of the Department of Administrative Services. The administrative appeal is the prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the Division, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

(2) Time for Filing. The administrative appeal must be filed in writing promptly with the Executive Director and delivered to the other parties to the Claim, but in no case more than fourteen (14) days after the Contractor's receipt of the Director's final resolution of the Claim.

(3) Content. The Administrative Appeal must state the basis for the appeal.

(4) Response. Within five (5) days of receipt of the Administrative Appeal, any party may deliver to Executive Director written comments concerning the appeal. A copy of such comments must be delivered to the other parties to the Claim within the same five (5) day time period.

(5) Reply to Written Comments. Within five (5) days of receipt of written comments, any party may deliver to the Executive Director a reply to the written comments concerning the appeal. A copy of such reply must be delivered to the other parties to the Claim within the same five (5) day time period.

(6) Executive Director's Decision. Within thirty (30) days of receipt of the Administrative Appeal, and after considering the appeal, the Director's final resolution, responses and replies, the Executive Director or his/her designee shall issue a final decision of the appeal in writing and shall state the basis of the decision. Failure of the Executive Director to issue a written decision within the thirty (30) day time period, shall entitle the appellant to seek judicial review of the Claim. The time period for the Executive Director's decision may be extended by agreement of the Executive Director and the Appellant.

R23-26-7. Payment of Claim.

(1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with

the payment provisions of the contract or judicial order.

(2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the contract to the point that the work or services is completed.

(3) The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period.

(4) Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the Division.

(5) Notwithstanding any other provision of this rule, payment of all or part of a Claim is subject to any set-off , claims or counterclaims of the Division.

(6) Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

(7) The execution of a customary release document related to any payment may be required as a condition of making the payment.

R23-26-8. Judicial Review.

(1) The Executive Director's decision on the appeal, or the failure to provide a decision within the required time period under Subsection R23-26-6(6), shall be deemed a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402, including, but not limited to requirements for exhaustion of administrative remedies, the requirements for a petition of judicial review, jurisdiction and trial de novo.

(2) The participation of a person in the claim evaluation process does not preclude the person from testifying in a judicial proceeding to the extent allowed by Utah law.

R23-26-9. Allocation of Costs of Claim Resolution Process.

(1) In order to file a Claim, a claimant must pay a $1500 filing fee to the Division. When the Claim is a pass-through from a Subcontractor in accordance with Subsection R23-26-4(5), the payment of the fee shall be made by the Subcontractor.

(2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

(3) The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

(4) Each party is responsible for its own attorney fees.

R23-26-10. Alternative Procedures.

To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this rule.

R23-26-11. Impact on Future Selections.

(1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the Division's selection process for a future award of contract; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the Division's evaluation of performance.

R23-26-12. Delegated Projects.

Projects delegated by the Division shall provide for contract provisions which provide a similar dispute resolution process as provided for in this rule.

R23-26-13. Report to Building Board.

The Division may report on the status of claims to the Utah State Building Board.

KEY: resolutions, settlements, disputes
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63G-6-208(2)

R58. Agriculture and Food, Animal Industry.
R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons.
R58-7-1. Authority.

A. Promulgated under authority of Section 4-30-3 and Section 4-2-2.

B. It is the intent of these rules to provide uniformity and fairness in the marketing of livestock within the state, whether sold through regularly established livestock markets or other types of sales.

R58-7-2. Definitions.

A. "Commissioner" means the commissioner of Agriculture and Food.

B. "Livestock" means cattle, domestic elk, swine, equines, sheep, goats, camelids, ratites, and bison.

C. "Representative" means a dealer licensed in Utah under Section 4-7-7 who is a resident of this state, or who is a representative of, or who in any capacity conducts business with a livestock auction market licensed under Section 4-30-4, which does business with an in state or out of state satellite video livestock auction market.

D. "Satellite video livestock auction market" means a place or establishment or business conducted or operated for compensation or profit as a public market where livestock or other agricultural related products located in this state are sold or offered for sale at a facility within or outside the state through the use of an electronically televised or recorded media presentation, which is, or can be exhibited at a public auction.

E. "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.

F. "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

R58-7-3. Livestock Markets.

A. Standards for Approved and Non-approved Markets. The operator of a livestock market shall maintain the following standards in order to obtain, retain or renew a livestock market license:

1. Follow procedures outlined in Section 4-30-4, and all state and federal laws and regulations pertaining to livestock health and movement.

2. Conduct all sales in compliance with the provisions of Utah laws and rules pertaining to livestock health and movement.

3. Furnish the Department with a schedule of sale days, which have been previously approved by the Commissioner of Agriculture and Food, giving the beginning hour.

4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Part II, U, 2 to 4. Records must be retained for 2 years.

5. Maintain the identity of ownership of all animals as set forth in Section 4-24-20, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18 71.19 and 9 CFR 79, January 1, 2001, edition. The tags are not to be removed in trading channels.

6. Permit authorized state or federal inspectors to review all phases of the livestock market operations including, but not limited, to records of origin and destination of livestock handled by the livestock market.

7. Provide adequate space for pens, alleyways, chutes, and sales ring; cover sales ring with a leak-proof roof.

8. Have floors in all pens, alleyways, chutes, and sales ring constructed in such a manner as to be easily cleaned and properly drained in all types of weather and to be easily maintained in a clean and sanitary condition.

9. Maintain all alleyways, pens, chutes, and sales rings in a clean and sanitary manner.

10. Furnish and maintain one or more chutes (in addition to the loading chute) at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets. Furnish personnel as required to assist Department or federal inspectors.

11. Provide specially designated pens or a provision for yarding for diseased animals infected with or exposed to brucellosis, tuberculosis, scabies, anaplasmosis, vesicular disease, pseudorabies, hog cholera, sheep foot rot, or other contagious or infectious disease.

12. Provide adequate facilities and service at a reasonable cost for cleaning and disinfecting cars, trucks and other vehicles which have been used to transport diseased animals as directed by the Department of Agriculture and Food or its authorized representative.

13. Do not release any diseased animal or animal exposed to any contagious, infectious or communicable disease from a livestock market until it has been approved for movement by the Department or its authorized representative.

14. Do not release any livestock from the market which have not complied with Utah laws and rules.

B. Additional Standards for Approved Markets.

1. Weigh each reactor individually and record reactor tag number, tattoo or other identifying marks on a separate weigh ticket, and record sales price per pound and net return after deducting expenses for required handling of such reactor. Restrict sale of all reactors to a slaughtering establishment where federal or state inspection is maintained.

2. Reimburse the Department monthly an amount equal to expenses incurred in providing a veterinarian at the livestock market.

3. Provide specially designated pens or a provision for yarding for animals classified as reactors, exposed, suspects or "S" branded.

4. Provide suitable laboratory space at the market as agreed between the market and the livestock market veterinarian for the conducting of brucellosis and other necessary tests.

C. Veterinary Medical Services. These services, fees, and collection procedures will be outlined and negotiated between the Department of Agriculture and Food, Livestock Auctions, and Veterinarians in contract agreements signed by each party. Any procedures, payments fees and collection methods done outside the contract terms will be worked out between the livestock market and the veterinarian.

D. Denial, Suspension or Cancellation of Registration. The Department may, after due notice and opportunity for a hearing to the livestock market involved, deny an application for registration, or suspend or cancel the registration when the Department is satisfied that the market has:

1. Violated state statutes or rules governing the interstate or intrastate movement, shipment or transportation of livestock, or

2. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

3. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

4. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

5. Failed to comply with any law or rule pertaining to

livestock health or movement, or

6. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

Temporary Livestock Market Licensees shall not be required to abide by the provisions in R58-7-3A (1,4,5,7-14), R58-7-3B (1-4), and R58-7-3C.

R58-7-4. Temporary Livestock Sale License.

A. A temporary livestock sales license shall be required for each sale where:

1. Livestock is offered for public bidding and sold on a yardage, commission or percentage basis.

2. Sales are conducted by or for a person at which livestock owned by such person are sold on his own premises, see R58-7-3 and 4.

3. Sales are conducted for the purpose of liquidation of livestock by a farmer, dairyman, livestock breeder or feeder.

4. Sales conducted by non-profit breed or livestock associations or clubs:

a. It is not the intent of this rule to require a bond from non-profit breed or livestock associations or clubs, or from liquidation sales if they conduct sales themselves and do not assume any financial responsibility between the seller and the buyer. However, if such sales are conducted by outside or professional management a license and either a bond, trust fund agreement or letter of credit will be required.

5. Other sales may be approved by the Department of Agriculture and Food.

B. A temporary license shall not be required for:

1. Sales conducted by Future Farmers of America or 4H Club groups.

2. Sales conducted in conjunction with state, county, or private fairs.

C. The Department shall be notified 10 days prior to all such sales.

D. A temporary livestock sales license shall be issued when the Department finds:

1. That an application as approved by the Department has been received, along with the payment of a $10.00 license fee.

2. That the applicant has filed with the Department where applicable a bond as required by the Department or in accordance with the Packers and Stockyards Act (7 U.S.C. 181 et seq.), except that a letter of credit or a trust fund agreement, as approved by the Department, may replace the bonding requirements.

R58-7-5. Dealers.

A. Dealer Licensing and Bonding:

No person shall operate as a livestock dealer in the state without a license and bond in accordance with Title 4, Chapter 7.

1. Upon receipt of a proper application and payment of a license fee in the amount of $25.00 and meeting current bonding requirements the Department will issue a license allowing the applicant to operate as a livestock dealer through December 31 of each year.

2. The Department, after due notice and opportunity for hearing to the dealer involved, may deny an application for license, suspend or cancel the license when the Department is satisfied that the applicant or dealer has:

a. Violated state statutes or rules governing the interstate or intrastate movement, shipment, or transportation of livestock, or

b. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

c. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

d. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

e. Failed to comply with any law or rule pertaining to livestock health or movement, or

f. Operated as a dealer without meeting proper licensing and bonding requirements.

B. Record Keeping.

1. All livestock dealers must keep adequate records to allow accurate trace back of all livestock to the prior owner Section 4-7-9.

2. Dealers shall permit the Department or its authorized representative to review all phases of the livestock dealer operations including, but not limited to, records of origin and destination of livestock handled by the livestock dealer.

3. Dealers shall retain above records for a period of two years.

R58-7-6. Responsibilities of a Bonded and Licensed Weighperson.

A. Weighperson operator to be competent, licensed and bonded.

1. Stockyard owner, market agencies, and dealers shall employ only competent, licensed and bonded persons of good character and known integrity to operate scales for weighing livestock for the purpose of purchase or sale. Any person found to be operating scales incorrectly, carelessly, in violation of instructions, or in such manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall be removed from his weighing duties.

2. The primary responsibility of a weigher is to determine and accurately record the weight of a livestock draft without prejudice or favor to any person or agency and without regard for livestock ownership, price condition, fill, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

3. Unused scale tickets, or those which are partially executed but without a printed weight value, shall not be left exposed or accessible to unauthorized personnel. All such tickets shall be kept under lock when the weigher is not at his duty station.

4. Accurate weighing and correct weight recording require that a weigher shall not permit the operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. Each draft of livestock must be weighed accurately to the nearest minimum weight value that can be indicated or recorded. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted part of weigh-beams, poses, and printing devices.

5. Livestock owners, buyers, or others having legitimate interest in a livestock draft must be permitted to observe the balancing, weighing, and recording procedures, and a weigher shall not deny them that right or withhold from them any information pertaining to the weight of that draft. He shall check the zero balance of the scale or reweigh a draft of livestock when requested by such parties.

B. Balancing the empty scale.

1. The empty scale shall be balanced each day before weighing begins, and maintained in correct balance while weighing operations continue. The zero balance shall be verified at intervals of not more than 15 drafts or 15 minutes, whichever is completed first. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale and also whenever a load exceeding half the scale capacity or 10,000 pounds (whichever is less) has been weighed and is followed by a load of less than 1,000 pounds, verification to occur before the weighing of the load of less than 1,000 pounds.

2. The time at which the empty scale is balanced or its zero balance verified shall be recorded on scale tickets or other permanent records. Balance tickets must be filed with other scale tickets issued on that date.

3. Before balancing the empty scale, the weigher shall assure himself that the scale gates are closed and that no persons or animals are on the scale platform or in contact with the stock rack, gates, or platform. If the scale is balanced with persons on the scale platform, the zero balance shall be verified whenever there is a change in such persons. When the scale is properly balanced and ready for weighing, the weigher shall so indicate by an appropriate signal.

C. Weighing the load.

1. Before weighing a draft of livestock, the weigher shall assure himself that the entire draft is on the scale platform with the gates closed and that no persons or animals off the scale are in contact with the platform, gates or stock rack.

D. Sale of livestock by weight.

All livestock sold by weight through a satellite video auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the Department of Weights and Measures in the manner prescribed by law.

R58-7-7. Satellite Video Livestock Auction Market.

1. Before entering into business as or with a satellite video livestock auction market and annually, on or before January 1, each market or representative shall file an application for a license to transact business as or with a satellite video livestock auction market with the commissioner on a form prescribed by the commissioner. The application must show:

a. the nature of the business for which a license is desired;

b. the name of the representative applying for the license;

c. the name and address of the proposed satellite video auction or the name and address of the satellite video auction the representative proposes to transact business with; and

d. other information the commissioner may require as listed in Subsection 4-7-6.

2. The application for a license or for a renewal for a license must be accompanied by:

a. a license fee in accordance with Section 4-30-4, determined by the department pursuant to Subsection 4-2-2(2).

b. evidence of proper security bonding as required in Subsection 4-30-4(3) for the satellite video auction and Section 4-7-7 for the representative.

c. a schedule of fees and commissions that will be charged to owners, sellers, or their agents; and

d. other information the commissioner may require as listed in Section 4-7-6.

3. Each satellite video auction will be considered as a temporary livestock sale unless licensed under this chapter as a satellite video auction market. Sales operated by a representative will be required to make application as designated in R58-7-4.

4. A copy of each and any contract between the representative and the satellite video auction market with which the representative proposes to transact business or a contract with the proposed satellite video auction market must be supplied to the department.

The contract must include a provision authorizing the commissioner or the commissioners designee to have access to the books, papers, accounts, financial records held by financial institutions, accountants or other sources; and other documents relating to the activities of the satellite video livestock market and requiring the satellite video auction market to make such documents reasonably available upon the request of the commissioner or the commissioners designee. If the contract between a representative and the satellite video auction market is terminated, rescinded, breached, or materially altered, the representative and the satellite video auction market shall immediately notify the commissioner. Failure to notify will be deemed failure to keep and maintain suitable records and be deemed to be a false entry or statement of fact in application filed with the department. (Section 4-7-11.)

R58-7-8. Livestock Market Committee.

A. Hearing on License Application; Notice of Hearing.

1. Upon filing of an application as a satellite video auction livestock market, the chairman of the Department of Agriculture and Food's Livestock Market Committee shall set a time and place for a hearing to review the application and determine whether a license will be issued.

2. Upon filing of an application as a representative of a satellite video auction market, the chairman of the Department of Agriculture and Food's Livestock Market Committee may elect to hold a hearing to review the application and determine whether a license will be issued.

B. Guidelines delineated for decision on application shall be in accordance with 4-30-6 and shall apply to the livestock auction market and the satellite video livestock auction market.

KEY: livestock
February 12, 2002 4-2-2
Notice of Continuation January 14, 2010 4-30-3

R58. Agriculture and Food, Animal Industry.
R58-10. Meat and Poultry Inspection.
R58-10-1. Authority.
Promulgated under authority of Section 4-32-7.

R58-10-2. Purpose.
The purpose of this rule is to establish standards and procedures for the meat and poultry product inspection programs, which shall at least equal those imposed by the Federal Meat Inspection Act and Poultry Inspection Act.

R58-10-3. Federal Regulations Adopted by Reference.
Accordingly, the Division adopts the meat and poultry inspection standards and procedures as specified in Title 9, Chapter III, Sub-Chapter A, Agency Organization and Terminology; Mandatory Meat and Poultry Products Inspection and Voluntary Inspection and Certification, Part 300 through 381; Sub-Chapter D, Food Safety and Inspection Service Administrative Provisions. Part 390 and 391, Sub Chapter E, Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, Part 416, 417, 424, 430, 441, and 500. Code of Federal Regulations, Animal and Animal Products, 9 CFR 300 through 500, January 1, 2007 edition, which is incorporated by reference within this rule.

KEY: food inspection
November 8, 2007 **4-32-7**
Notice of Continuation January 14, 2010

R58. Agriculture and Food, Animal Industry.
R58-17. Aquaculture and Aquatic Animal Health.
R58-17-1. Authority and Purpose.

(A) This rule is promulgated under the authority of Section 4-37-101 (et seq.) Amendments, Subsection 4-2-2(j) and 4-37-503.

(B) This rule establishes a program for the registration and fish health monitoring of aquaculture facilities, fee-fishing facilities, fish brokering, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events and displays. This rule also addresses the importation of aquatic animals into Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in operations listed in R58-17-1(B) must comply with the rules for site selection and species control under Department of Agriculture and Food 4-37-201(3)and 4-37-301(3) and Department of Natural Resources rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies established and adopted by the Fish Health Policy Board.

R58-17-2. Definitions.

(A) The following terms are defined for this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility, private fish pond or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete or egg of any species listed in definitions under Subsection R58-17-2(3)(a).

(4) "Blue Book" means a set of the most current standard procedures approved by the American Fisheries Society for inspecting the health of aquatic animals.

(5) "Brokers or fish brokering" refers to the activities of dealers, entities, individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals between approved or licensed facilities pursuant to R58-17-13(C) and R58-17-14 without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells (brokers) additional aquatic animals without rearing them.

(6) "Certificate of Registration (COR)" means an official document which licenses facilities with the Department of Agriculture and Food or which licenses facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the COR is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(7) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(8) "Disease History" means a record of all known pathogens that have historically affected aquatic animals reared at a facility that seeks health approval pursuant to R58-17-15(C)(2)(b).

(9) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2), R657-3, R657-16 in accordance with the provisions of Sections 23-14-1 and 4-37-105, Utah Code.

(10) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum (BKD), IHNV, IPNV, OMV, VHSV, SVCV, EHNV) and those horizontally transmitted (from one fish to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, Tetracapsuloides bryosalmonae (PKX), Myxobolus cerebralis (whirling disease), and Yersinia ruckeri).

(11) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. These pathogens generally cannot be treated and shall be controlled through avoidance, eradication, and disinfection (see R58-17-20).

(12) "Emergency Response Procedures" are procedures established by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(13) "Emergency response team" means teams as defined by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-9, R58-17-10(A)(1) and R58-17-10(B)(1).

(14) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah pursuant to R58-17-13. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight and source of aquatic animals to be imported.

(15) "Facility disease history report" means a report of all known pathogens that have historically affected aquatic animals reared at a facility seeking approval pursuant to R58-17-15, subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d).

(16) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage pursuant to Section 4-37-103 and R58-17-18.

(17) "Fish health approved/health approval" means a system of procedures which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. The Department's and Division's responsibilities for granting health approval are delineated in R58-17-15. Health Approval status is granted to qualified COR holders in Utah and to aquatic animal sources inside and outside of Utah, all of which have satisfactorily completed health approval requirements pursuant to R58-17-15, and placed on the fish health approval list (R58-17-13(C)). Health approval of the source facility is necessary before a purchase may be made from the source facility or before the source facility may sell, transfer, or broker aquatic animals in or into Utah pursuant to R58-17-14.

(18) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503 and referred to in R58-17 as the "Board".

(19) "Fish processing plant" means a facility pursuant to R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids or other live and dead aquatic animals as approved on the COR for processing.

(20) "Five-year disease history" means a report of all known pathogens affecting each stock native to, propagated at, or imported to the originating facility. These stocks or the offspring of these stocks are subsequently moved to another facility that seeks health approval pursuant to R58-17-15 subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d). The report shall cover up to the previous five years.

(21) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(22) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(23) "OIE" means the Office International des Epizooties of the World Organization for Animal Health, an intergovernmental organization that was established in 1924 to promote world animal health. The OIE provides guidelines and standards for health regulations and diagnostic tests. The most recent manual of health standards for aquatic animals is used to inspect for aquatic animal pathogens, for which the Bluebook has not developed standards. Such pathogens include EHNV, WSSV, YHV, TSV, and IHHNV covered in R58-17-20.

(24) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(25)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(26) "Procedures for the Timely Reporting of Pathogens" means procedures established by the Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(27) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc (see R58-17-20).

(28)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for the controlled cultivation of aquatic animals by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(29) "Public fishery resource" means aquatic animals produced in public aquaculture facilities, purchased or acquired for public fishery waters and sustained as wild and free ranging populations in the surface waters of the state.

(30) "Quarantine" means the restriction of movement of live or dead aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(31) "Reportable pathogen" is a pathogen that generally is prevented using good management practices. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but positive findings must be reported to the Board.

(32) "Salmonid and non-salmonid" designate aquatic animals based on the range of optimal growth temperatures used in their culture. "Salmonid" means any species of aquatic animal that is of the order Salmoniformes and optimally lives in coldwater conditions. "Non-salmonid" means any species of aquatic animal that is not of the order Salmoniformes nor cultured in coldwater conditions. For purposes of R58-17, aquatic animals such as cool water fish, warm water fish, and crustaceans (shrimp, crayfish, and prawns) are classified as non-salmonids.

(33) "Source" means all rearing or holding locations during all of the life stages of an aquatic animal.

(34) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule, R657-59 or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule, R657-59 or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

R58-17-4. Certificate of Registration (COR) Required.

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within Utah:

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a fish processing plant.

(d) Broker aquatic animals.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

(a) public aquaculture facilities;.

(b) private fish ponds unless otherwise exempt from COR requirements under R657-59-3 and R657-59-7;

(c) institutional aquaculture facilities (R657-16-13);

(d) short term fishing events (R657-16-11);

(e) private stocking (R657-16-12);

(f) displays (R657-16-14).

(3) Entry permits shall be issued to holders of current CORs for the activities named in this subsection and to private fish pond owners pursuant to R58-17-13 (J) and R657-59.

R58-17-5. Species Allowed.

(A) Pursuant to Division of Wildlife Resources rules R657-3, R657-59, R657-16, and Utah Code sections 23-15-10 and 23-13-5, only those species authorized by the Division or the Wildlife Board may be imported, possessed, or transported in conjunction with the authorized activity.

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will monitor sales receipts to insure that the species described on CORs, sales receipts, and entry permits issued by the Department are those authorized by the

Division.

R58-17-6. Qualifying Waters.

(A) A private or public aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Offstream reservoirs, and excavated ponds or raceways may be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

R58-17-7. Screens Required.

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs pursuant to R58-17-4 and a precondition to delivery of aquatic animals to private fish ponds from health approved sources as provided in section 23-15-10 and R657-59-15.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) The Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) and Section 23-15-10 and R657-59-15 during reasonable hours.

(D) It is the responsibility of the private fish pond owner or COR holder to report to the Department or Division, depending on which agency has jurisdictional authority, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of the public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator or private fish pond owner will bear all costs for remedial actions. The Department or Division shall notify all affected agencies and parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

R58-17-8. Application and Renewal of Certificates of Registration (CORs).

(A) Application process.

(1) For application procedures pursuant to R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 for activities listed in R58-17-4(A)(1) or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301 for activities listed in R58-17-4(A)(2).

(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.

(3) Department or Division authorization of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within 14 work days pursuant to R58-17-5 and R58-17-6. Pursuant to R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.

(4) If the application is granted, a written COR and COR number will be issued. The COR holder shall keep a copy of the COR on file for 2 years pursuant to Section 4-37-110.

(5) If the application is denied, a written explanation will be sent to the applicant.

(B) Renewal process.

(1) All CORs are valid until December 31 for the calendar year issued unless specified otherwise on the COR or unless renewed sooner.

(2) CORs must be renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.

(3) Failure to timely renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction pursuant to R58-17-13(G) of the live or dead aquatic animals at the facility. Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means acceptable to the agency having responsibility.

(C) CORs are not transferable.

R58-17-9. Reporting Fish Diseases.

Persons involved in aquaculture and being regulated by this rule, R657-59, or R657-16, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures established by the Board. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Board.

R58-17-10. Quarantine of Aquatic Animals and Premises.

(A) If evidence exists that the aquatic animals in any facility are infected with or have been exposed to pathogens listed in R58-17-15(D)(2) and (3), then either quarantine or removal from the approval list (R58-17-2 (17), depending on the pathogen, may be imposed by the Commissioner of Agriculture or the State Veterinarian. Any action other than a quarantine must be approved by the Board.

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires the creation and implementation of a biosecurity plan that specifies action to control the pathogen and includes testing requirements of all lots of fish to verify the absence of the pathogen. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures such as decontamination of the facility and equipment, destruction of aquatic animals, etc. may be imposed. Such measures will be in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to

protect aquatic animals within the state. This action may be reviewed by the Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility or that biosecurity control measures are being followed which will control further spread of the pathogen, and that removal of the quarantine does not create a risk to other aquatic animal populations. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed pursuant to R58-17-10(A)(2).

(C) Any person, licensed pursuant to R58-17 and affiliated with a facility under quarantine, who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or sanitizes the truck according to Department recommendations each time it leaves the quarantined facility.

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may either quarantine or remove the facility from the health approval list pursuant to R58-17-10 and take steps to prevent the spread of the pathogen and to eliminate it. These actions may be reviewed by the Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below in this subsection, depending on the pathogen involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and decontamination or disposal of all handling equipment and holding facilities.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed pursuant to R58-17-10(A)(2). Once sufficient evidence shows that the pathogen is not present at a facility, full restocking may begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested according to provisions outlined in the biosecurity plan to determine if the pathogen persists. At the end of the production cycle, then testing should be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If biosecurity of the facility cannot or is not being maintained, immediate destruction of the stocks may be required. The biosecurity plan for the facility shall remain in effect if the COR holder sells or goes out of business.

R58-17-12. Statement of Variances.

Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Board may grant specific variances to the rule if the following conditions are met:

(A) The variance is based on scientifically sound information and rationale.

(B) The variance will cause no significant threat to other aquaculture operations, state or private, or to public fishery resources.

(C) The variance is documented appropriately.

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah. This permit is in addition to the COR for operation of the facility or as otherwise specified in R58-17-4. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

(1) Name, address, phone number and COR number of importer.

(2) Species, size and/or number of aquatic animals to be imported.

(3) Name and health approval number of sources, origin of aquatic animals, transfer history, and approximate date of shipment.

(4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating a negative record of testing by OIE reference labs for prohibited pathogens pursuant to R58-17-15(D)(2) and (3), a negative record of other OIE-listed pathogens affecting the aquatic animals to be imported, and that known nuisance species are not found in the water source. In addition, written authorization from the US Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) for the importation must be included.

(B) Each shipment of live aquatic animals must be authorized. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow up to two weeks for the Department to verify the health approval status of the source and to verify authorized species status pursuant to R58-17-5.

(C) All import shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and (B). A list of approved sources is maintained by the Department, but the list is not published due to frequent updates. Information on currently approved sources may be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been authorized by the Wildlife Board and the Division pursuant to R657-3, R657-59-16, and 4-37-105(1).

(E) To import live grass carp (Ctenopharyngodon idella), the fish must be verified as being triploid (sterile) by a laboratory and method acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish. Copies of the entry permit, treatment or testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require inspection, treatment or testing of any aquatic animal and plant species, including aquatic invasive species, water, vehicle, or container, in accordance with current scientific knowledge before

importation.

(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals may be imported into Utah for processing at a fish processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a fish processing plant without an Entry Permit, but they must be killed upon release from the transport vehicle and may not be held live at the fish processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with "quick lime" (Calcium oxide), composted, digested, or disposed of by means acceptable to the Department to deter the spread of pathogens and non-native species pursuant to R657-3 by water or animals. The Department may apply the requirements in this subsection to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant, or live or dead aquatic animals from any facility into public waters is illegal. Proper disposal is the responsibility of the processor/owner/broker pursuant to R58-17-13(G).

(I) All transport vehicles, importing aquatic animals imported into Utah or transporting them through Utah pursuant to R58-17-14(C), must have proper documentation and are subject to inspection. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

(J) Aquatic animals may be imported and transported to a private fish pond by an out-of-state source, approved by the Department, or by an aquaculture facility representative with a current COR by following requirements in section 4-37-204. The approved or licensed facility representative and the private fish pond representative shall sign and forward receipts pursuant to R58-17-17 (D).

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be purchased or acquired only by persons or entities who possess a valid COR that authorizes the animals or as otherwise specified in R58-17-4. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person or entity located outside of Utah. Current listing for each source and species on the health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals or as otherwise specified in R58-17-4.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to the facility named on the COR.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination or as specified in R58-17-4.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species. Transportation of aquatic animals to a private fish pond may not require a COR pursuant to R657-59-3, but movement and delivery of the aquatic animals is subject to the species restrictions in R657-59-16.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the pathogens on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written authorization to move the aquatic animals.

(D) Brokers:

(1) Brokers shall follow the same requirements that other producers follow as to importation, health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To qualify for health approval of their fish, brokers shall obtain health approval for all source facilities from which they broker fish.

R58-17-15. Aquatic Animal Health Approval.

(A) Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department pursuant to this section. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

(1) The Department shall be responsible for granting health approval and assigning a health approval number to aquaculture facilities in Utah, and to any out-of-state sources pursuant to 4-37-501(1). The Division shall be responsible for granting health approval and assigning a health approval number to public aquaculture facilities within the state, and for the movement of live aquatic animals from wild populations in waters of the state pursuant to 4-37-501(1).

(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(3) The Board may review health approval actions of the Department or the Division.

(B) Basis for Health Approval:

(1) Health approval for salmonid aquatic animals is based on the statistical attribute sampling of each lot of aquatic animals at the facility in accordance with current Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier prevalence for the prohibited pathogens, pursuant to R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of fish.

(2) All lots of fish shall be sampled.

(3) For brood facilities, lethal sampling may be required on

the brood fish if the following conditions exist:

(a) Progeny are not available at the facility for lethal sampling;or

(b) A statistically valid sample of ovarian fluids from ripe females is not tested.

(4) Collection, transportation and laboratory testing of the samples will follow standard procedures specified by the Department, the Division and the Board. Inspections will be conducted under the direction of an individual certified by the American Fisheries Society as a fish health inspector.

(5) EGG ONLY sources - A facility which cannot gain full health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided the eggs are free of the listed vertically transmitted pathogens pursuant to R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from fish-free water sources.

(6) Health approval for non-salmonid aquatic animals is based on specific pathogen testing for that identified aquatic animal as per R58-17-15(D). In addition, the agency having responsibility pursuant to R58-17-15(A)(1) and (2) will discuss the disease history of the facility with the producer, and then contact acceptable fish health professionals to identify other existing or potential disease problems.

(7) Under no circumstances shall health approval be granted to a facility if any lots test positive for pathogens listed in R58-17-15(D)(2) or (3) or if any of the same pathogens contaminate the facility's production waters or water source.

(C) Approval Procedures:

(1) Applicable to all aquatic animals.

(a) To receive initial health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency (see R58-17-15(A)(1) and (2)). Applicants seeking initial approval and annual renewal for non-salmonid aquatic animals shall complete and submit forms provided by the Department or Division. Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility, available disease histories by means of a facility disease history report and a five year disease history report, and fish transfer histories. The same application materials shall be required annually for renewal of health approval for activities occurring between applications.

(b) Inspections are conducted pursuant to Utah Code Section 4-37-502 and this section rule to detect the presence of any prohibited pathogens listed under R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of health approval, evidence must be available verifying that prohibited pathogens listed under R58-17-15(D)(2) and (3) are not present.

(c) Once requirements for health approval have been met, the facility shall be added to the health approval list of the responsible agency and assigned a health approval number for the current year. Health approval of each facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to R58-17-15(A)(1).

(d) The Department will report all confirmed results of pathogens pursuant to R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.

(e) Public aquaculture facilities and wild brood stocks are included on the health approval list maintained by the Division. The Division will report all confirmed results of pathogens pursuant to R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.

(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if health approval is canceled or denied, then subsequent health approval may be granted only after the facility owner has satisfactorily reapplied pursuant to R58-17-15(C).

(2) Applicable to salmonid aquatic animals:

(a) For initial approval of new facilities, two inspections of the same lot, at least four months apart and negative for any prohibited pathogen listed in R58-17-15(D)(2) and (3), are required. The aquatic animals must have been at the facility at least six months prior to the first inspection. During the inspections, the aquatic animals shall be reared for appropriate periods in waters from one source, and lots from all source waters at a facility shall be inspected.

(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks transferred to the facility are required.

(c) All lots of aquatic animals at the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to R58-17-15(B)(4).

(d) After initial approval, annual inspections shall be conducted to renew health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. This is to allow the facility to conduct business while awaiting test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous year for all stocks imported to the facility shall be required before each renewal.

(3) Applicable to non-salmonid aquatic animals:

(a) For approval of facilities, one inspection of aquatic animals to be approved from the pond, reservoir, or holding facility and negative testing of an appropriate attribute sample for any applicable prohibited pathogen pursuant to R58-17-15(D)(2) and (3)is required. A composite sample of 60 fish of the same lot from all ponds in the shipment from the same water source may be accepted in lieu of a full attribute sample.

(b) In addition, a written report is required from an acceptable fish health professional stating that no clinical signs of any infectious fish disease are ongoing and that certain pathogens are not infecting the species to be imported at the time of importation.

(D) Prohibited and reportable pathogen list:

(1) Pathogens requiring control are classified as emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the aquatic animals or eggs originate from an area where the pathogen is found. Pathogens denoted by a double asterisk (**) after the name can only be transmitted in fish and not in the eggs, therefore permitting the special provisions for egg only sources provided in R58-17-2(A)(10) and R58-17-15(B)(5). Excluding Artemia cysts, aquatic shrimp and prawns are not marketed as eggs, thus exempting shrimp and prawns from the egg-only provisions. However, the egg-only provision may be applied should shrimp or prawns be marketed as eggs and the Department or Division determines a vertically transmissible, emergency prohibited pathogen is present. Pathogens of aquatic shrimp and prawns are denoted with a triple asterisk (***) after the name. Pathogens that are inspected using the most current OIE Manual of Diagnostic Tests for Aquatic Animals are denoted with the pound sign (#) after the name.

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

(e) Spring viremia of carp virus (SVCV).

(f) *Epizootic hematopoietic necrosis virus (EHNV)#.

(g) White spot syndrome virus (WSSV)***#.

(h) Yellow head virus (YHV)***#.

(i) Taura syndrome virus (TSV)***#.

(j) Infectious hypodermal and hematopoietic necrosis virus (IHHNV)***#.

(3) Prohibited pathogens.

(a) Myxobolus cerebralis (whirling disease)**.

(b) Renibacterium salmoninarum (bacterial kidney disease (BKD)).

(c) *Ceratomyxa shasta (ceratomyxosis disease)**.

(d) Bothriocephalus (Asian tapeworm disease bothriocephalosis)**.

(e) *Tetracapsuloides bryosalmonae or PKX (proliferative kidney disease (PKD))**.

(4) Reportable pathogens.

(a) Yersinia ruckeri (enteric redmouth disease)**.

(b) Aeromonas salmonicida (furunculosis disease)**.

(c) Centrocestus formosanus.

(d) Emerging fish pathogens (including any filterable agent or agent of clinical significance as determined by the Board).

(5) The Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Board. Reporting of unregulated pathogens to the Board is not required.

(6) The Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

R58-17-16. Inspection of Records and Facilities.

(A) Except as otherwise provided in R657-16-9 and R657-59-12, the following records shall be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency pursuant to R58-17-4.

(1) Purchase, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives pursuant to R58-17-4 and Utah Codes 4-1-4, 4-31-16 and 23-15-10 and under appropriate regulatory responsibility may conduct pathological or physical investigations at any registered facility, private fish ponds and fish being imported or transported in vehicles, during reasonable hours if there is cause to believe that a disease condition exists or as otherwise authorized in R58-17-7, R58-17-17 (D), R657-59 and R657-16. Any laboratory testing as a result of this investigation will be at the owner's expense if evidence indicates that R58-17 has been violated pursuant to the investigation.

R58-17-17. Aquaculture Facilities, Fish Processing Plants, Brokers.

(A) COR required:

A COR is required to operate an aquaculture facility or a fish processing plant and to act as a broker. A separate COR and fee are required for each facility defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live aquatic animals may be sold or transferred:

The operator of an aquaculture facility with health approval may take the aquatic animals as authorized on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Fish processing plants dealing with salmonids shall neither hold nor sell live salmonids.

(C) Fee-fishing facility and/or fish processing plant allowed: The operator of an aquaculture facility may also operate a fee-fishing facility pursuant to R58-17-18 and/or a fish processing plant pursuant to R58-17-17 and R58-17-13(G) and (H), provided the fee-fishing facility or the fish processing plant is within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required: Any sale, shipment, or transfer of live aquatic animals from an out-of-state approved source, from an aquaculture facility or by a broker must be accompanied by a receipt. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department with the annual report. The receipt will contain:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number, strain name, species name, age/size, reproductive capability and weight being shipped.

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations excluding private fish pond owners that qualify to operate without a COR.

(5) Dates of transactions.

(6) Signatures of seller and buyer or as otherwise required in R657-59.

(E) Annual reports required:

Aquaculture facility owners, fish processing plant owners, and brokers shall submit annual reports of all sales, transfers, and purchases to the Department at the time of the COR renewal, pursuant to R58-17-8(B)(2). Report forms will be provided by the Department.

(1) The report will contain: (a) Names, addresses, phone numbers, COR numbers and health approval numbers of sources.

(b) Number, size and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) Copies of receipts pursuant to R58-17-17(D), shall be submitted as part of the annual report to the Department.

(3) Reports shall be submitted to the Department by December 31 each year and must be received before a COR will be renewed. If the report, application, receipts and fee are not received by December 31 pursuant to R58-17-8(B), the COR will no longer be valid and regulatory action may be initiated pursuant to R58-17-8(B)(3). For sales made after submittal of the annual report and before January 1, the facility owner shall submit an addendum report that is due by January 31.

(4) The report made by operators of fish processing plants shall also contain all purchases and transfers to and from the facility and shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H).

(F) Fees assessed:

The initial and annual renewal COR fee for aquaculture facilities, brokers, and fish processing plants is $150.00, pursuant to Section 4-37-301.

(G) The COR holder shall keep a copy of CORs, reports, and records on file for two years pursuant to 4-37-110.

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

A COR is required to operate a fee-fishing facility. A separate COR is necessary for separate fee-fishing facilities as defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live sales or transfers prohibited:

The operator of a fee-fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except when the approved species may be transferred into the same facility from an approved source.

(C) Fishing licenses not required:

A fishing license is not required to take aquatic animals at a fee-fishing facility.

(D) Receipts required:

To transport dead aquatic animals from a fee-fishing facility, the customer (owner associations and catch and release operations are exempt) shall receive from the operator a receipt which includes:

(1) Name, address, COR number, COR expiration date and phone number of the facility.

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

The operator of a fee-fishing facility shall submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form will be provided by the Department. This report must contain:

(1) Names, addresses, phone numbers, health approval numbers, COR numbers and COR expiration dates of all sources.

(2) Number, size and weight by species.

(3) Dates of purchase and acquisition of aquatic animals.

(F) Fees assessed and annual report deadline:

(1) The initial and annual renewal fee for a fee fishing COR is $30.00, pursuant to 4-37-301.

(2) Holders of CORs, who renew applications including report, receipts, and fee after December 31 pursuant to R58-17-17(E)(3), shall be assessed a $25.00 late fee. If the application, report, receipts and fee are not received by December 31 pursuant to R58-17-8(B)(1), the COR will be no longer valid and regulatory action may be initiated pursuant to R58-17-8(B)(3).

(G) The COR holder shall keep a copy of CORs, reports, logs, and records on file for two years pursuant to 4-37-110.

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

Details on the COR and regulatory requirements pursuant to R58-17-4 for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in Division of Wildlife Resources' Rules R657-16 and R657-59.

R58-17-20. Classification of Pathogens.

TABLE

I. Emergency prohibited pathogens are pathogens that cause high morbidity and high mortality, are exotic to Utah, and require immediate action. These pathogens generally can not be treated and shall be controlled through avoidance, eradication, and disinfection.

Pathogen	Classification	Species	Inspection Requirement/Comment
Infectious Hematopoietic Necrosis Virus (IHNV)	Emergency Prohibited	Salmonids	
Infectious Pancreatic Necrosis Virus (IPNV)/Aquatic Birnaviruses	Emergency Prohibited	All susceptible hosts	May be isolated from many species of aquatic organisms
Viral Hemorrhagic Septicemia Virus (VHSV)	Emergency Prohibited	Salmonids, pike, herring turbot, pilchard, etc.	
Oncorhynchus Masou Virus (OMV)	Emergency Prohibited	Salmonids	
Spring Viremia Of Carp Virus (SVCV)	Emergency Prohibited	All cyprinids esocids Shrimp	Required use of Bluebook designated, cell lines; inspection requirement shall be applied as needed to koi and ornamental fish
Epizootic Hematopoietic Necrosis Virus (EHNV)	Emergency Prohibited	Salmonids, percids, ictalurids, silurids, Gambusia, etc.	Required only for fish from endemic areas; use OIE Manual for test protocol
White Spot Syndrome Virus (WSSV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
Yellow Head Virus (YHV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
Taura Syndrome Virus (TSV)	Emergency Prohibited	Freshwater or marine Shrimp	Protocol for testing in OIE Manual
Infectious Hypodermal and Hematopoietic Necrosis Virus (IHHNV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual

II. Prohibited pathogens are pathogens that can cause high morbidity or high mortality, may be endemic to Utah, and require action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc.

Myxobolus cerebralis (Whirling Disease)	Prohibited	Salmonids	Focus on more susceptible species as per Bluebook
Renibacterium salmoninarum (Bacterial Kidney Disease, BKD)	Prohibited	Salmonids	Required for salmonid species with more frequently reported clinical disease, such as Pacific salmon, brook trout, lake trout, Atlantic salmon, grayling, etc.
Ceratomyxa shasta	Prohibited	Salmonids	Inspect fish only from reported endemic areas
Bothriocephalus acheilognathi (Asian tapeworm)	Prohibited	All cyprinids, one Poecilid	Mosquito fish (Gambusia affinis) is the poecilid regulated under this section
Tetracapsuloides bryosalmonae (proliferative kidney disease, PKD)	Prohibited	Salmonids	Inspect fish only from reported endemic areas

III. Reportable pathogens are pathogens that are generally prevented using good management practices. Reportable pathogens are not prohibited in Utah, but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but all positive findings must be reported to the Board.

Yersinia ruckeri (enteric redmouth disease)	Reportable		No inspection requirement in Utah
Aeromonas salmonicida (furunculosis)	Reportable		No inspection requirement in Utah
Centrocestus	Reportable		Not applicable.

formosanus	Usually diagnosed by the presence of metacercarial cysts in gills via light microscopy: no inspection protocols available

KEY: aquaculture
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Notice of Continuation January 14, 2010 **4-37**

R58. Agriculture and Food, Animal Industry.
R58-20. Domesticated Elk Hunting Parks.
R58-20-1. Authority and Purpose.

In accordance with the Domesticated Elk Act, and the provisions of Section 4-39-106, Utah Code, this rule specifies:

(i) procedures for obtaining domesticated elk facility licenses,

(ii) requirements for operating those facilities,

(iii) standards for disposal/removal of animals within those facilities, and

(iv) health standards and requirements in such facilities.

R58-20-2. Definitions.

In addition to terms used in Section 4-39-102, and R58-18-2:

(1) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.

(2) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.

(3) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.

(4) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.

(5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.

(6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

(1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.

(3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.

(6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.

(7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

(1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.

R58-20-5. Facilities.

(1) Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

R58-20-6. Records.

(1) All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks.

R58-20-7. Genetic Purity.

(1) All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks.

R58-20-8. Acquisition of Elk.

(1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.

R58-20-9. Identification.

(1) All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.

R58-20-10. Inspections.

(1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.

(3) All live domestic elk must be brand inspected prior to entering or leaving the park.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.

(6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.

(7) Pursuant to Section 4-39-207, agricultural inspectors

may, at any reasonable time during regular business hours, have free and unimpeded access to inspect all facilities, animals and records where domestic elk are kept.

R58-20-11. Health Rules.

(1) All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.

R58-20-12. Meat.

(1) The selling of domestic elk meat obtained from a licensed hunting park will not be allowed and:

(a) Must be consumed by either the hunter or park owner or their immediate family members, regular employees or guests, or the meat shall be:

(b) Donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

R58-20-13. Liability.

(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

(4) In accordance with the state's governmental immunity act, as found in Section 63G-7-101, et seq., the granting of a hunting park license or the imposing of a requirement to gain an owner's permission does not attach any liability to the state for any accident, mishap or injury that occurs on, adjacent to, or in connection with the hunting park.

KEY: inspections
January 27, 2010 **4-39-106**
Notice of Continuation February 23, 2009

R58. Agriculture and Food, Animal Industry.
R58-21. Trichomoniasis.
R58-21-1. Authority.

Promulgated under authority of Section 4-31-21.

R58-21-2. Definitions.

A. Acceptable media - Any Department approved media in which samples may be transferred, transported, and cultured. At this time, the approved media is the InPouch™ TF (BioMed Diagnostics, San Jose, Calif.).

B. Approved slaughter facility - A slaughter establishment that is either under state or federal inspection.

C. Brand - A 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, Trichomoniasis.

D. Certified veterinarian - A veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for trichomoniasis testing.

E. Commuter bulls - Bulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

F. Confinement - Bulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.

G. Department - The Utah Department of Agriculture and Food.

H. Exposed to female cattle - Freedom from restraint such that breeding is a possible activity.

I. Feeder Bulls - Bulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.

J. Negative bull - A bull that has been tested with official test procedures and found free from infection by Tritrichomonas foetus.

K. Official tag - A tag authorized by the Department that is placed in the right ear of a bull by a certified veterinarian after being tested for trichomoniasis. The color of the official tag shall be changed yearly.

M. Official test - A test currently approved by the Department for detection of Tritrichomonas foetus. The culture test and the Polymerase Chain Reaction (PCR) test are the currently approved test methods.

N. Positive bull - A bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.

O. Positive herd - Any herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed with trichomoniasis within the last 12 months.

P. Qualified feedlot - A feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows, or bulls. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

Q. Test chart - A document which certifies that a bull has been subjected to an official test for trichomoniasis and indicates the results of the test.

R. Trichomoniasis - A venereal disease of bovidea caused by the organism Tritrichomonas foetus.

R58-21-3. Trichomoniasis - Sampling and Testing Procedures.

A. Sample collection - Samples are obtained from a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

B. Sample handling - Samples shall be transferred and transported in approved media and maintained at 65 to 90 degrees Fahrenheit (18 to 32 degrees Celsius). Samples shall be set up for culture testing within 24 hours of sampling. Samples shall also be protected from direct sunlight.

C. Culture testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) and monitored for growth at 24 hour intervals for 96 hours.

D. Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) for 24 hours and then frozen. The frozen sample shall be sent overnight on ice to the Utah Veterinary Diagnostic Laboratory (950 East 1400 North, Logan, Utah 84341) for PCR testing.

E. Test interpretation - A sample is considered test negative if one (1) PCR test or one (1) culture test is negative for the presence of Tritrichomonas foetus.

R58-21-4. Trichomoniasis - Rules - Prevention and Control.

A. All bulls nine months of age and older, entering Utah, must be tested with one (1) Polymerase Chain Reaction (PCR) test or three (3) culture tests, collected no less the seven days apart, for Trichomoniasis by an accredited veterinarian within 30 days prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

B. The following bulls are exempted from (A) above:

1. Bulls going directly to slaughter or to a qualified feedlot,

2. Feeder bulls kept in confinement operations,

3. Rodeo bulls for the purpose of exhibition, and

4. Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.

B. Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.

C. All bulls nine months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and April 30 of the following year, or prior to exposure to female cattle according to approved sampling and testing procedures.

D. Testing shall be performed by a certified veterinarian.

1. All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.

a. Electronic forms shall have the following information:

i. Veterinarian's name and contact information

ii. Owner's name and contact information

iii. Bull's Trichomoniasis tag number, age, breed

iv. Date of collection

v. Test results

2. A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.

E. All bulls from positive herds are required to have three negative culture tests, no less than one week apart, or one negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle. Exceptions include bulls going to slaughter or to a qualified feedlot, bulls in confinement operations, and feeder bulls.

F. All bulls nine months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for Trichomoniasis with an official test prior to sale. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale or transfer of ownership.

G. It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the Trichomoniasis status of a bull being offered for sale at a livestock auction.

1. Untested bulls (i.e. bulls without a current Trichomoniasis test tag), including dairy bulls, must be sold for slaughter only, for direct movement to a Qualified Feedlot, or

Confinement Operation.

H. Any bull over nine months of age which has strayed and commingles with female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

I. All Utah bulls, which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test.

J. Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the Trichomoniasis test charts from the testing veterinarian.

K. Bulls which bear a current Trichomoniasis test tag from another state which has an official Trichomoniasis testing program will be acceptable to the State of Utah providing that they meet all Trichomoniasis testing requirements as described above.

R58-21-5. Trichomoniasis - Rules - Positive Bull.

A. A bull is considered positive if:

1. Trichomonas organisms are identified when cultured by the examining veterinarian or a laboratory, or

2. A laboratory identifies Tritrichomonas foetus using a Polymerase Chain Reaction (PCR) test.

B. An owner may have the option to request submission of the positive culture sample to an approved reference laboratory for confirmation by Polymerase Chain Reaction (PCR) test.

1. The sample from said bull must be shipped to the laboratory using the protocol described in R58-21-3.

2. A sample determined by Polymerase Chain Reaction (PCR) not to be Tritrichomonas foetus will be considered negative and the bull can be used for breeding purposes.

3. A sample found to be inconclusive will result in the need for the bull to be sampled and tested a second time.

C. All bulls testing positive for Trichomoniasis must be reported immediately to: 1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.

D. The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattleman within ten days following such notification by the certified veterinarian.

E. All bulls which test positive for Trichomoniasis must be sent by direct movement within 14 days, to:

1. Slaughter at an approved slaughter facility, or

2. To a Qualified Feedlot for finish feeding and slaughter, or

3. To an approved auction market for sale to one of the above facilities.

F. Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official.

G. Positive bulls entering a Qualified Feedlot, or Approved Auction Market shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with Trichomoniasis.

R58-21-6. Trichomoniasis - Rules - Non-compliance.

A. Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with Trichomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

B. After April 30, owners of untested bulls may be fined $200.00 per head.

C. Owners of untested bulls that have been exposed to female cattle may be fined up to $500.00 per head regardless of the time of year.

KEY: disease control
September 22, 2009 **4-31-21**
Notice of Continuation January 27, 2010

R64. Agriculture and Food, Conservation and Resource Management.
R64-1. Agriculture Resource Development Loans (ARDL).
R64-1-1. Authority and Purpose.

Pursuant to Section 4-18-5, this rule establishes general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function.

R64-1-2. Definitions.

(1) "Commission: means the Soil Conservation Commission created by Section 4-18-4, which directs and implements the Agriculture Resource Development Loan program throughout the State of Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.

(2) "ZEC Committee: means a Zone Executive Committee for each of the seven zones in the state, consisting of one member from each of the soil conservation districts in that zone to coordinate the ARDL program at the zone level.

(3) "S.C.D. Board" means a Soil Conservation district Board, a five-member group within each of 39 soil conservation districts in the state created by Section 4-18-5, to coordinate the ARDL program at the district level.

(4) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of Agriculture Resource Development Loan program employed by the Department of Agriculture and Food.

(5) "Technical assistance" or "technical assistance agency" means such individuals or group of individuals, including administrative services, who may be requested by an applicant client to provide specialized input for proposed projects.

(6) "Executive Committee" means a group composed of a chairman, the President of the Utah Association of Conservation Districts (UACD), and a commission member at large, which review applications for presentation to the Soil Conservation Commission.

(7) "Application" means a project proposal which is prepared by an individual seeking ARDL loan funds through the process established by the commission and in accordance with Section 4-18-5.

(8) "Resource Improvement and Management Plans" means plans and specifications prepared by a technical assistant, or technical assistance agency, which technical assistants and agencies are pre-approved by the commission.

R64-1-3. Administration of Agriculture Resource Development Fund.

(1) The objectives of the ARDL program are to conserve soil and water resources of the state, increase agriculture yields for croplands, orchards, pastures, range and livestock, maintain and improve water quality, conserve and improve wildlife habitat, prevent flooding, conserve or develop on-farm energy resources, and mitigate damages to agriculture as a result of flooding, drought, or other natural disasters. The commission shall annually allocate funds appropriated for projects that further these objectives.

(2) Applicant clients shall submit finalized project proposals to the ARDL Program Coordinator or Loan Administrator for review. Applications shall be reviewed for funding by the executive committee. Applicant clients shall comply with district, zone and commission application procedures, which are available from district and zone offices. Applicant clients shall be investigated for credit and security as may required by the commission; including past and current financial holdings, fiscal-obligations, and debt history. When requests are expected to exceed available funds, projects shall be rated and prioritized according to levels of quality of improvement(s) sought. Rating and approval information from ZEC committees and SCD boards shall be duly considered.

(3) Loans will be awarded in accordance with contracts; which will generally consist of promissory notes or other documents that are agreed to and signed by applicant clients to perfect such liens on collateral.

(4) When proposed projects include technical issues that are sufficiently complex, loan and technical assistance fees may be charged to clients. Some projects may require supervision by commission designated personnel.

(5) Contracts with applicant clients shall be based on security involving defined collateral. Contracts shall include schedules for loan repayment according to agreed upon interest rates and related fiscal conditions. The ARDL Loan Administrator may acquire appraisals and estimates of collateral values, and is authorized to obtain security or collateral in order to meet the provisions of the contract until agreed upon amounts have been collected.

(6) Projects for which funds are loaned shall be inspected and certified by commission designated personnel for compliance with contractual provisions.

(7) Under direction of the commission the ARDL Program Coordinator or Loan Administrator shall manage the program; interpret guidelines, administer record-keeping operations, research financial loan collateral security information, process and service contracts associated with program functions, recommend loan approvals to the commission, analyze resource improvement and management plans, and administer loan servicing/collection activities.

KEY: loans
January 16, 1996 **4-18-5**
Notice of Continuation January 7, 2010

R68. Agriculture and Food, Plant Industry.
R68-7. Utah Pesticide Control Act.
R68-7-1. Authority.

Promulgated under authority of Section 4-14-6.

R68-7-2. Registration of Products.

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-3(1).

(7) The department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-3 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-5 of the Utah Pesticide Control Act.

(10) A registration fee determined by the department, pursuant to Subsection 4-2-2(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-2(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

R68-7-3. Product Labeling.

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-4.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

R68-7-4. Classification of Pesticides.

The commissioner shall classify all pesticide products registered in Utah for "restricted use" or "general use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. He may also restrict the use of additional pesticides if he finds that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

R68-7-5. Classification of Pesticide Applicators.

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

R68-7-6. Categorization of Pesticide Applicators.

Commercial and Non-commercial applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control pests in the

maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on home foundations, sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and around buildings and allows for applications up to three feet from the structure.

(8) Public Health Pest Control. This category includes applicators applying the use of pesticides for the management and control of pests having medical and public-health importance. This category includes mosquitoes, ticks, bedbugs, louse, and fleas.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must be at least 16 years of age and show competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-4 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Subterranean Termite Pre-Construction Treatment Applications. Minimum Standards. Full treatment: Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and horizontal barriers between the structure and the termite colonies in the soil.

(a) For Horizontal Chemical Barriers: Applications shall be made using a low pressure spray after grading is complete and prior to the pouring of the footing and the main slab to provide thorough and continuous coverage of the area being treated. Application rates, unless label requires elevated rates, must be at least 1 gallon per 10 square feet.

(b) For Vertical Chemical Barriers: Establish vertical barriers in areas such as around the base of foundations, plumbing lines, backfilled soil against foundation walls and

other areas which may warrant more than a horizontal barrier. Application rates, unless labeling requires elevated rates, are to be treated at a rate of 4 gallons per 10 linear feet to soil backfill areas next to walls, piers, pipes, and under other "crucial areas" such as slab expansion joints.

(c) Partial Treatments: Defined as anything less than a full treatment. Partial Pre-Construction treatments are not acceptable.

(4) Private Applicators. Private applicators shall show practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(5) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he is needed.

(6) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide applicator business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 2-5 commercial pesticide applicators and 10 or more commercial pesticide applicators.

Application for such licenses shall be made in writing on an approved form obtained from the department and shall include such information as prescribed by the department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed. An applicator and business license fee determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the department shall issue a commercial applicator's license. The license shall expire December 31 of each year unless it has been revoked or suspended prior by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification.

(a) A license will be renewed without examination if the renewal notice is received by the Utah Department of Agriculture and Food of prior to January 1 of any year.

(b) If the renewal notice is received after January 1 but before March 1, individuals will be required to pay the late fee, and no re-examination will be required.

(c) If the renewal notice is received after March 1, individuals will be required to recertify according to the original pesticide-applicator certification procedures.

Each license shall expire on December 31 of the year of its issuance. Commercial applicators may voluntarily pay a triennial license fee in lieu of the annual license fee. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(d) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, is not engaged in the business of applying pesticides for hire or compensation, does not publicly represent himself as a pesticide applicator, and operates his pesticide application equipment only in the vicinity of his owned or rented property for the accommodation of his neighbors; provided, however, that when such persons use a restricted-use pesticide, they shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the department. Application for such license shall be made in writing on an approved form obtained from the department and shall include such information as prescribed by the department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way.

(3) License Issuance. If the department finds the applicant qualified to apply pesticides in the classification(s) applied for, the department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. A prescribed examination and educational material fees shall be required. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application.

If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Renewal, Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area, and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a

license shall be made in writing on a designated form obtained from the department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the department, by satisfying any of the following procedures or any other requirements specified by the department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate nine credits of approved continuing education during the valid three years of certification.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

R68-7-9. Dealer Licensing.

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained an annual license from the department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer's license for his principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a license fee determined by the department pursuant to subsection 4-2-2(2). If the department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the department shall issue a restricted-use pesticides dealer's license. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. This license shall expire December 31 of each year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-11.

(3) License Renewal. License-renewal fees are payable annually before January 1. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. If the renewal of a pesticide dealer's license is not received prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides shall be required by the department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. A register form, provided by the department, shall include the following information:

(a) The name and address of the purchaser.

(b) Brand name of restricted-use pesticide purchased.

(c) EPA registration number of restricted-use pesticide purchased.

(d) Month, day and year of purchase.

(e) Quantity purchased.

(f) Signature and license number of the purchaser, expiration date of license, or signature of purchaser's agent (uncertified person) if letter of authorization is on file. Letter of authorization must include names of agents, signature and license number of purchaser.

Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provide restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(6) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

R68-7-10. Transportation, Storage and Disposal of Pesticides and Pesticide Containers.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or to pollute any waterway in a manner harmful to any wildlife therein.

(2) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section 152.3 and Part 165, Subparts A through E.

R68-7-11. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false, fictitious, or fraudulent claims written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate or inconsistent with rules of the department if those rules further restrict the uses provided on the labeling.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

(22) Refused or neglected to comply with the Federal Container and Containment regulations.

KEY: inspections, pesticides
January 4, 2010 **4-14-6**
Notice of Continuation March 16, 2006

R68. Agriculture and Food, Plant Industry.
R68-20. Utah Organic Standards.
R68-20-1. Authority.

Promulgated under authority of Sections 4-2-2(1)(j), 4-3-2, 4- 4-2, 4-5-17(1), 4-9-2, 4-11-3, 4-12-3, 4-14-6(5), 4-16-3, 4-32-7(7)(a)(ii), 4-37-109(2).

A. The Utah Department of Agriculture and Food (UDAF) adopts and incorporates by reference CFR, June 7, 2006 edition, Title 7 Part 205, National Organic Program Final Rule.

1. UDAF will make available to all its applicants for certification and producers of organic products, copies of the National Organic Program Final Rule.

R68-20-2. Definitions and Terms.

A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

1. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

2. "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor is required to be certified if that person both takes title to the organic products and substantially transforms, processes, repackages or re-labels these products.

3. "Food (and food products)" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include all agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

4. "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

5. "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with provisions of this rules.

R68-20-3. Compliance.

A. Violations of the State Organic Program will be handled in compliance to Section 4-2-12.

R68-20-4. Fees for Organic Certification.

Fees for Organic Certification Services.

A. Fees shall be in accordance with the fee schedule in the annual appropriations act passed by the Legislature and signed by the Governor. The person, firm, corporation or other organization requesting registration as a producer, handler, processor or certification agency or requesting inspection or laboratory services shall pay such fees. All fees are payable to the Utah Department of Agriculture and Food.

B. Registration of producers, handlers, processors or combinations thereof. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all producers, handlers, processors or combinations thereof and shall be paid by April 1 each year.

C. Registration of Certification agencies Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all certification agencies and shall be paid by April 1 each year.

D. Gross sales fees. Payment of annual gross sales fees shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

R68-20-5. UDAF Seal.

Use of the UDAF Organic Seal

A. The UDAF seal may be used only for raw or processed agricultural products in paragraphs (a), (b), (e)(1), and (e)(2) of CFR 205.301.

B. The UDAF seal must replicate the form and design and must be printed legibly and conspicuously.

1. On a white background with a double black circle the words, Utah Department of Agriculture and Food, within the borders of the circles. At the bottom of the circle a teal green horizontal line.

2. Within the inner circle a black outline of the State of Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

3. A copy of the seal is available at the Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500.

KEY: inspections
February 28, 2007 **4-2-2(1)(j)**
Notice of Continuation January 12, 2010 **4-3-2**
4-4-2
4-5-17(1)
4-9-2
4-11-3
4-12-3
4-14-6(5)
4-16-3
4-32-7(7)(a)(ii)
4-37-109(2)

R70. Agriculture and Food, Regulatory Services.
R70-101. Bedding, Upholstered Furniture and Quilted Clothing.
R70-101-1. Authority.

A. Promulgated Under Authority of Section 4-10-3.

B. Scope: The purpose of these rules is to designate the license fees, labeling, terms, definitions, nomenclature and conditions as commonly used and recognized in the manufacture, sale and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. General Requirements.

A. These rules shall apply to all persons, partnerships, corporations, limited liability companies, and associations engaged in the business of manufacturing, retailing, wholesaling, processing, repairing, and selling items of bedding, upholstered furniture, quilted clothing, and filling materials. These rules do not apply to persons who make or renovate upholstered furniture, clothing or bedding for their own use.

B. Foreign, out-of-state articles or materials sold in Utah. This rule shall apply to bedding, upholstered furniture, quilted clothing, and filling materials sold in Utah regardless of their point of origin.

R70-101-3. Definitions.

A. "Manufacture" means to make, process, or prepare from new or secondhand material, in whole or in part, any bedding, upholstered furniture, quilted clothing, or filling material for sale; but does not include isolated sales of such articles by persons who are not primarily engaged in the making, processing, or preparation of these articles. For the purpose of the enforcement of this rule, the term "manufacturer" shall mean a person who either by himself or through employees makes for the purpose of sale any bedding, upholstered furniture, quilted clothing, filling material, or any unit thereof.

B. "Non-resident" means a person licensed under these rules who does not have premises in the State of Utah.

C. "Old" means filling material or portion thereof which shows characteristics of aging through deterioration or changing from its original qualities.

D. "Person" means an individual, partnership, association, firm, auctioneer, trust, limited liability company, or corporation, and agents, servants and employees of them.

E. "Premises" means all places where bedding, upholstered furniture, quilted clothing, or filling material is sold, offered for sale, exposed for sale, stored, renovated or manufactured, and the delivery vehicles used in their transportation.

F. "Supply dealer" means a person who manufactures, processes or sells at wholesale any felt, batting, pads or other filling, loose in bags, in bales or in containers, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

G. "Sell" or any of its variants includes any combination of the following: sale, offer, or expose for sale, barter, trade, deliver, rent, consign, lease, possess with the intent to sell or dispose of in any other commercial manner; but does not include any judicial, executor, administrator or guardian sale. The possession of any article of bedding, upholstered furniture, quilted clothing, or filling material defined in these rules, by any maker, dealer, or his agents or servants in the course of business, shall be presumptive evidence of intent to sell.

H. "Uniform Registry Number", "URN", or "state-issued registry number" means the number issued by a state to be used on the law tag of bedding, furniture, or filling materials to identify the manufacturing facility, person, or company accepting responsibility for such products.

R70-101-4. License.

Except as otherwise provided in these rules, any person who advertises, solicits or contracts to manufacture, repair or wholesale any bedding, upholstered furniture, quilted clothing, or filling materials who either does the work himself or has others do it for him, shall secure the particular license for the particular type of work that he solicits or advertises that he does, regardless of whether he has a shop or factory. This license shall be obtained before such products are offered for sale in Utah.

A. Annual license fee. The fee imposed for each license granted under these rules shall be approved by the Legislature.

When the appropriate fee is not paid on or before January 1, the license shall become delinquent, and there shall be added to the fee a late penalty, as approved by the Legislature in the Departments schedule of fees.

B. Suspension or revocation of license and procedure. In addition to other remedies provided in this rule, the Department shall have the authority to suspend or revoke any registration or license required by this rule for any violation of their provisions. A suspension or revocation shall be handled as outlined in Section 4-1-5.

R70-101-5. Sanitation Requirements.

A. Use of unsanitary filling material. The premises, delivery equipment, machinery, appliances, and devices of all persons licensed under these rules shall at all times be kept free from refuse, dirt, contamination or insects and no person shall use in the making, repair or renovating of bedding, upholstered furniture, or quilted clothing any filling material:

1. that contains any bugs, vermin or filth;
2. that is unsanitary;
3. that contains burlap or other material that has been used for baling.

R70-101-6. Manufacturing, Distribution, Advertising, Labeling and Sale of Quilted Clothing.

A. This section establishes standards and procedures relating to quilted clothing. The department adopts by reference the Rules and Regulations under the Textile Fiber Products Identification Act, July 9, 1986 edition; under the Fur Products Labeling Act, July 4, 1980 edition; and under the Wool Products Labeling Act of 1939, July 9, 1986 edition; excepting that wherever conflicts arise, the state rule shall govern.

B. Articles of plumage-filled clothing shall meet the following requirements:

1. Articles labeled "Down" shall contain a minimum of 75% down and plumules. The minimum down cluster percentage must be listed.
2. Articles containing less than 75% down, shall label the percentages of down and feathers contained therein and shall contain at a minimum the percentage of "Down" printed on the tag.

R70-101-7. Manufacturer Identification and Tag Requirements.

A. The identification of a manufacturer, wholesaler, or supply dealer of quilted clothing or filling material which is to appear on the label and on the tag shall be the same as required in rule 19-20 of the Federal Textile Fiber Products Identification Act and Wool Products Labeling Act, and the Federal Trade Commission Rules and Regulations.

The form of identification used on labels and on the tags shall be the same supplied to the Department on the application for registration.

B. For articles of bedding and upholstered furniture, the law tag shall use the format adopted by the International Association of Bedding and Furniture Law Officials (IABFLO), as listed in the "Tagging Law Manual" of the International Sleep Products Association (ISPA). A copy of the current edition of the "Tagging Law Manual" is available for public

inspection at the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

1. Tags on articles manufactured wholly of new material shall be white in color.

2. Tags on articles manufactured in whole or in part of secondhand materials and tags for "Owners Own Material" shall be yellow.

3. Color of ink on tags shall be black.

4. Tags shall be made of material that cannot be torn or easily abraded, and shall be the required color on both surfaces.

5. All required information shall be clearly and legibly printed in English and printed on one side of the tag only.

6. Tags shall be firmly attached to the article(s) in a position easily visible for examination. Regulated products which are offered for sale in boxes or in some other packaging which makes the law tags attached to the products themselves inaccessible, shall reproduce a fully legible facsimile of the law tag on the outer container or covering.

7. No mark, label, printed matter, illustration, sticker or any other device shall be placed upon the tags in such a way as to cover the required information.

8. A single uniform registry number (URN), issued by the state in which the firm is first registered, shall be used on the law tag. The firm's license with the state that issued the URN must be kept current for the number to be valid for use on products sold or offered for sale in Utah.

C. Every firm doing business under more than one state-issued uniform registry number (URN) shall obtain a license for each number used on products that are offered for sale in Utah. (A change of suffix on a URN shall constitute a new number and require an additional license.)

R70-101-8. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

A. The filling material shall be described on the label and on the tag by the true generic name, grade, description term, or definitions of the filling material as accepted and approved by the Department. When more than one kind of filling material is used in a mixture, the percent by weight of each shall be listed in order of their predominance. Federal fiber tolerance standards are applicable, except as pertains to plumage products.

B. Blends may be described, if applicable, as under Section 14 in this rule. In the case of non-down and/or non-feather filled articles of quilted clothing, any fiber or groups of individual fibers present in an amount of less than 5% by weight, of the total fiber content may be designated only as "other fiber" or "other fibers".

C. When different filling materials are used in various parts of the garment, the areas of the garment shall be named, followed by the name of the filling material used in that area. Examples:

Body - 50% Down, 50% Feathers

Sleeves - Polyester Fiber

Pockets - Nylon Fiber

D. Use of trade names and non-generic terms to describe filling material(s) is prohibited.

R70-101-9. Use of Rubber Stamp or Stencil.

A rubber stamp or stencil may be used in lieu of a tag on articles having a smooth backing on which the imprint can be legibly and indelibly stamped, and on suitable surfaces of bales or containers of felt, batting, pads, or other filling material used or to be used in bedding, upholstered furniture, and quilted clothing products.

R70-101-10. Making or Selling Material or Parts.

A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing, unless such material is plainly tagged as described in this rule.

R70-101-11. Labeling of Foreign Articles.

Responsibility for labeling of unlabeled foreign-made bedding, upholstered furniture, quilted clothing, and filling material in compliance with this rule shall rest with the person selling the merchandise in Utah.

R70-101-12. Violation of This Rule.

A. It shall be a separate violation of this rule for each improperly labeled or tagged or unlabeled or untagged article of bedding, upholstered furniture, quilted clothing, or filling material made, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provisions of this rule.

B. Defense. No person shall be guilty of a violation of this rule if he has received, from the person by whom the articles were manufactured or from whom they were received, a guarantee in good faith that the articles are not contrary to the provisions of these rules. The guarantee shall be in the form prescribed by the Federal Textile Fiber Products Identification Act, the Federal Wool Products Labeling Act and the Federal Trade Commission Rules and Regulations.

R70-101-13. Enforcement Procedures.

A. Removal of Inspector's Tag. Any person who removes, or causes to be removed, any tag or device placed upon any article of bedding, upholstered furniture, quilted clothing, or filling material, by an inspector in the performance of his official duties, is guilty of violation of this rule.

B. Failure to Produce Articles Condemned. The failure of any person to produce upon demand of an inspector any article that has been condemned and ordered held on inspection notice signed by the person, or an inspection notice that the person has refused to sign, is a violation of this rule.

C. Interfere, Hinder Inspector. No person shall interfere with, obstruct, or otherwise hinder any inspector of the Department in the performance of his duties.

D. Retailers are Responsible to:

1. ensure that any article of bedding, upholstered furniture, or filling material they sell is labeled with a uniform law tag;

2. ensure that quilted clothing tags list filling material(s) and the name or Registered Number (RN) of the manufacturer or distributor;

3. fully comply with the Department's laws and rules governing false and misleading advertisement;

4. and make sure that all manufacturers from whom they purchase products that come under the purview of the act, hold a valid license with the Department.

5. In addition, upon request of any representative of the Department, a retailer shall provide the Department with the identity of the manufacturer or wholesaler of any article of bedding, upholstered furniture, quilted clothing, or filling material sold by that retailer.

6. If the manufacturer or wholesaler so identified is not registered pursuant to this rule and fails or refuses to register upon notification by the Department, any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by the manufacturer or wholesaler and sold or offered for sale in this state may be withheld from sale until the manufacturer or wholesaler registers; provided, that in the event the manufacturer or wholesaler fails to register, the retailer may register in lieu of the manufacturer or wholesaler.

R70-101-14. Rules and Regulations for Filling Material.

A. All terms and definitions of all filling materials shall be those terms which have been submitted to and approved by

IABFLO, except those terms and definitions listed in this rule.

B. The document entitled "Plumage Regulations", the 2001 edition, approved by IABFLO, is adopted and incorporated by reference within this rule.

C. Cleanliness of Filling Materials.

All filling materials shall be reasonably clean and free from extraneous material, dirt, dust, filth, epidermis, excreta, disagreeable odors, or other contamination.

"Cleanliness" shall mean the oxygen number of any filling material consisting of whole feathers, down, or a combination thereof; and the oxygen number of any filling material consisting of an admixture of feathers and down which contains five percent (5%) of crushed feathers shall not exceed 25 grams of oxygen per 100,000 grams of sample. (Oxygen number is considered to be the amount, by weight, of oxidizable matter such as blood, excreta, and/or fecal matter present.)

D. "Imperfect, irregular foam" shall mean any foam products which show major imperfections or that fall below the foam manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the foam.

E. "Imperfect, irregular fibers" shall mean fibers that have imperfections or that fall below the fiber manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the fiber.

F. The terms "Prime","Super","Northern" and other terms of similar import shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement. Industry shall be responsible for proving to the Department that the fill is superior to the industry standard rating of 550 cubic inches of fill power.

R70-101-15. Products Not Intended for Uses Subject to This Rule.

A. The Commissioner hereby excludes from this rule all textile fiber products related to quilted clothing except:

1. Articles of down, feather, or fiber filled clothing.
2. Down, feather, or fiber filled hats and hoods.
3. Down, feather, or fiber filled slippers and booties with fabric outer-covering.
4. Down, feather, or fiber filled gloves.
5. Bulk filling material used in the above.

KEY: quality control
January 11, 2010 **4-10-3**
Notice of Continuation September 6, 2005

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(18) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department may require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis. The determination of when to put a licensee, permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the department and shall be based on the following factors:

(i) dollar amount of the returned check(s);

(ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the department;

(iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission.

(e) In addition to the remedies listed in Subsections (5)(a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 32A-12-212(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32A-12-212(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (1)(b) and (1)(c) is $20.00.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve,

sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to

persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor					
1st	X	X			
2nd			100 to 500		
3rd			200 to 500	1 to 5	
Over 3			500 to 25,000	6 to	X
Moderate					
1st		X	to 1,000		
2nd			500 to 1,000	3 to 10	
3rd			1,000 to 2,000	10 to 20	
Over 3			2,000 to 25,000	15 to	X
Serious					
1st			500 to 3,000	5 to 30	
2nd			1,000 to 9,000	10 to 90	
Over 2			9,000 to 25,000	15 to	X
Grave					
1st			1,000 to 25,000	10 to	X
Over 1			3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days
Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 100	5 to 30
2nd			to 150	10 to 90
Over 2			to 500	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (2008 edition) and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63G-4-102(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against

a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63G-4-202 and -203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if

applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is

permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and, 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63G-4-401, -402, -404, and -405 and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402, -404, and -405, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of

agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the

record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

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

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63G-4-403, -404, -405.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the

manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(45) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32A-4a. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(53) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash

vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63G-3-201(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the

facts, but no later than 60 days from the date of the alleged act of discrimination.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of

the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(29), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free

alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63G-3-201 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or

electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" are as defined in 32A-1-105(28).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to

prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1- 105(54).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(55).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or social club.

(b) A tavern or social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32A-1-111, 32A-2-101(1)(b),32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-4a-203, 32A-4a-303, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32A-1-701 through 704 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing

the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32A-1-806(2)(c) and (d) and 32A-1-807 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32A-1-804, effective October 1, 2008, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32A-1-804 to -806.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32A-1-805(6):

(i) the department may revoke any label and packaging approved by the department prior to October 1, 2008, that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32A-1-806, effective October 1, 2008, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32A-1-806, effective October 1, 2008, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;
(ii) in a solid contrasting background;
(iii) in a format that is readily legible; and
(iv) separate and apart from any descriptive or explanatory information.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32A-1-106(9) that gives the commission authority to hold special commission meetings; and 32A-1-107(1) that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

KEY: alcoholic beverages
January 26, 2010
Notice of Continuation August 31, 2006

32A-1-106(9)
32A-1-107
32A-1-119(5)(c)
32A-1-702
32-1-703
32A-1-704
32A-1-807
32A-3-103(1)(a)
32A-4-103(1)(a)
32A-4-106(1)(a)
32A-4-203(1)(a)
32A-4-304(1)(a)
32A-4-307(1)(a)
32A-4-401(1)(a)
32A-5-103(1)(a)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-7-106(5)
32A-8-103(1)(a)
32A-8-503(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-10-206(14)
32A-10-303(1)(a)
32A-10-306(5)
32A-11-103(1)(a)
32A-12-212(1)(b) and ©

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-1. Definition.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the sole purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public.

Type 5 - A package agency under contract with the department which is located within a winery, distillery, or brewery that has been granted a manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

No part of any surety bond required in Section 32A-3-105, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.

R81-3-4. Change of Package Agent.

Pursuant to Section 32A-3-106(17), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Special Orders of Liquor by Public.

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

(2) Application of Rule.

(a) Only type 2 and 3 package agencies may process special order requests.

(b) Any individual may place a special order at any type 2 or 3 package agency. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a type 2 or 3 package agency or with the purchasing division of the department. A special order shall be processed as follows:

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

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

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

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

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

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

(vii) The department=s special order buyer shall obtain a retail bottle price and call the customer and/or package agent for clearance to proceed with the order.

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

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

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

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

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

R81-3-6. Liquor Returns, Refunds and Exchanges.

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

(2) Application of Rule.

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

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

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

(iii) All returned product must have the state stamp attached to each bottle.

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

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

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

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

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

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

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

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

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

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

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

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

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

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

R81-3-7. Warning Sign.

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

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of identification to establish proof of age for the purchase of liquor by customers:

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

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

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

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in 32A-1-303. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

An application for a package agency shall be included in the agenda of the monthly commission meeting for consideration for issuance of a package agency contract when the requirements of Sections 32A-3-102, -103, and -105 have been met, a completed application has been received by the department, and when the package agency premises have been inspected by the department. No application fee is required for type 2 and 3 package agency applicants.

R81-3-12. Evaluation Guidelines of Package Agencies.

Type 2 and 3 package agencies shall:

(1) serve a population of at least 6,000 people comprised of both permanent residents and tourists;

(2) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location; and

(3) maintain a gross profit to the state of $12,000 annually to assure adequate service to the public.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under 32A-4a, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32A-3-106(9) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries; and

(B) a package agency held by a resort that is licensed under 32A-4a that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery, distillery, or brewery premises at a location approved by the commission.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32A-3-106(10).

R81-3-15. Refusal of Service.

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

R81-3-16. Minors on Premises.

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

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32A-3-106(2)(b). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's regional manager assigned to the package agency.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, authorization, or payment of money. A copy of the transfer, adjusting authorization, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) After receipt of a shipment of merchandise, the package agent shall submit a check to the department within 30 days of the authorization/transfer date.

(ii) The check shall be annotated with the authorization, transfer and credit memo numbers to which it applies as follows: Authorization(s) + or - transfers - credit memos = check.

(iii) All delivery discrepancies shall be resolved immediately by contacting the department's warehouse shipping manager. Payment shall be made on all authorizations/transfers by their due date whether or not any discrepancies have been resolved.

(iv) Any returned checks to the department from a package agent is grounds to require the package agent to provide a certified check to pay for future shipments.

(v) If a check for an authorization is not received by the department within 30 days of its due date, the department may assess the legal rate of interest on the amount owed, or may terminate the contract with the package agent and close the package agency.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The regional manager shall audit the package agency at least once every six months.

(iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

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

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19. Credit Cards.

(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.

(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(c) The cashier shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.

(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.

(e) All credit cards must be signed by the card holder.

(f) Customers may not use another person's credit card, including their spouse's card.

(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their regional manager concerning proper storage and disposal of such receipts.

(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the credit card machine keyboard. An imprinted copy of the credit card must then be made. The imprinted copy must be signed by the card holder.

KEY: alcoholic beverages
January 26, 2010 32A-1-107
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R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

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

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

(i) that offers temporary sleeping accommodations for compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) that is in total at least 30,000 square feet unless the facility is a "grandfathered facility" under 32A-4-401(8); and

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

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

(b) Each "banquet contract" shall:

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

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

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

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(24).

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32A-4-402, -403, and -405 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

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

(b) Pursuant to 32A-4-402(2) and 32A-4-406(4) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

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

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32A-4-406.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-405, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required

in Section 32A-4-402(1)(a)(ix) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

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

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

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

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32A-4-406(7). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

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

Liquor dispensing shall be in accordance with Section 32A-4-406; and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

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

R81-4D-9. Alcoholic Product Flavoring.

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

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

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

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

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

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

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

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

R81-4D-12. Identification Badge.

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

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

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

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

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

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

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

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32A-4-406(21).

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

(3) Application of the Rule.

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

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

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

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

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

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

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

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

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

(g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32A-1-119, 32A-4-406, and R81-1-6 and -7.

KEY: alcoholic beverages
January 26, 2010 **32A-1-107**
Notice of Continuation July 31, 2008

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

Resort licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4a-202(4), 32A-4a-203, 32A-4a-305(30), and 32A-4a-401(14).

R81-4E-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a resort license when the requirements of Sections 32A-4a-202, -203, and -205 have been met, a completed application has been received by the department, and the resort premises have been inspected by the department.

(2) Pursuant to 32A-4a-204(3) and 32a-4A-302(1), each sublicense of a resort license is not required to:

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

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

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

(3) Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

R81-4E-3. Bonds.

No part of any corporate surety or cash bond required by Section 32A-4a-205, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4E-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4e-202(1)(i) and (j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

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

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

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

Allowable hours of liquor sales shall be in accordance with Section 32A-4a-305(18). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

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

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

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

(3) Liquor dispensing shall be in accordance with Section 32A-4-106; and Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4E-8. Liquor Storage.

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

R81-4E-9. Alcoholic Product Flavoring.

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

(1) Alcoholic product flavoring may be utilized in

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

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

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

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

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

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

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

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

(1) Contents of Alcoholic Beverage Menu.

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

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

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

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

R81-4E-13. Identification Badge.

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

R81-4E-14. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105(47), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:

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

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

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

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

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

(2) Application. Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

(3) Minors in Lounge or Bar Areas.

(a) Pursuant to 32A-4a-305(24), a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

(b) "Lounge or bar area" includes:

(i) the bar structure as defined in 32A-1-105(4);

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

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

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

R81-4E-16. Applicability of Rules.

(1) 32A-4a-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32A for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32A-5-107 that are applicable to a club licensee.

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

KEY: alcoholic beverages
January 26, 2010 **32A-1-107**

R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Complex Facility Use.
R131-2-1. Purpose and Application.

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Preferred Caterer" means the Capitol Hill food service provider who is under contract with the Board to provide food/beverages and catering services on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Private Caterer" means any entity providing catering services and not holding a contract with the Board, and is not the Preferred Caterer.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business

entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of

alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held. Signs or posters may not be on sticks or poles.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) Open flames, flammable fluids, candles, and explosives are prohibited.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8:00 a.m. to 4 p.m. The executive director may allow a different

time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Catering.

(a) Except as provided through a waiver under (13) Below, Catering services on the Capitol Hill Complex shall be exclusively provided by the Preferred Caterer, for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. The Preferred Caterer shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, and located on the first floor of the Senate Building.

(b) Any Private Caterer requested through a waiver under (13) below, must comply with all of the following:

(i) An applicant desiring catering services must first meet with the Preferred Caterer in a good faith attempt to find out if the Preferred Caterer can reasonably provide the catering service requested;

(ii) If the applicant, after such good faith attempt, reasonably determines that the Preferred Caterer cannot provide the requested catering service and a waiver is approved, then the applicant may use a Private Caterer if all the criteria and requirements of this Rule are met, which criteria and requirements cannot be waived:

(i) Area where Preferred Caterer has Exclusive Rights. The Preferred Caterer shall have exclusive rights to the food service facilities, dining room and conference rooms in the Senate building located on the first floor. No other food service will be allowed within this area in the Senate Building.

(ii) Quality Control Policies. The Private Caterer must meet or exceed all Quality Control Policies that are in the contract between the Board and the Preferred Caterer. The Board shall provide a form stipulating the minimum standards.

(iii) Verification Forms. Supplier/Vendor verification forms, which form shall be on the Board's approved form only, must be provided by the Private Caterer. This form shall include all pertinent information about the Private Caterer's vendors and sources for food and beverages including recall and verification information similar to the requirements imposed upon the Preferred Caterer.

(iv) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The selected Private Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least $1,000,000 and general aggregate limits of at least $2,000,000. The selected Private Caterer shall also maintain, if applicable to Provider's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least $1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in the waiver process, at the Private Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Private Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Provider shall also maintain "all risk" property insurance at replacement cost applicable to the Private Caterer's property and/or its equipment.

(D) The Private Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Private Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Private Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related

to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(v) Indemnification: The Private Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Private Caterer, or its agents, employees subcontractors or anyone for whom Private Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(vi) Record Keeping and Audit Rights: The Private Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Private Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vii) Equal Opportunity: No Private Caterer shall unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(viii) Taxes: The Private Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Private Caterer, including taxes levied or incurred against Private Caterer's income, inventory, property, sales, or other taxes.

(ix) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(x) Payment and Performance Evidence: The Private Caterer shall provide evidence of financial responsibility as may be required as a condition of the waiver, which demonstrates the Private Caterer's ability to perform the services contemplated by the waiver request. Such evidence of financial strength as further specified as part of the waiver approval process may be in the form of a performance bond, letter of credit, financial statements or other form which is reasonably acceptable to the Board. Additionally, the Private Caterer shall post a $10,000 cash bond or letter of credit in an amount specified in the waiver approval process, in a form approved by the Attorney General's Office, payable to the Board which the Board (or financial institution for a letter of credit) shall hold for a 90 day period from the date of the catering service in an interest bearing account. At the end of the 90 day period, the remaining funds in that account shall be returned to the private cater provider. During the term of the account, these funds may be used by the Executive Director to repair any damage to the Capitol Hill Complex caused by the Private Caterer or anyone for whom the Private Caterer is liable. If the amount of the bond or letter of credit is insufficient to cover such damage(s), then the Private Caterer either directly or through its insurance provider shall promptly pay the excess amount needed to cover the cost of the Board to repair the damage. The use of these funds shall be at the reasonable discretion of the executive director with advance written notice provided to the private caterer.

(xi) Certification. The Private Caterer shall certify that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in providing the catering services of the subject waiver request, by any governmental department or agency. If the Private Caterer cannot certify this statement, the Private Caterer shall attach a written explanation for review by the Selection Committee. The Private Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(xii) Comply with Facility Use Rules. The Private Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Private Caterer has not complied with a rule enacted by the Board, the Private Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xiii) Inspection. The Board or the Executive Director reserves the right to inspect the Private Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xiv) Energy. The Private Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xv) Food Handlers Permits. All of the Private Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xvi) Financial Arrangements. The Board shall receive an amount per person served by the Private Caterer as described in the Board's adopted fee schedule. The payment of this amount per person shall apply even if the catered event is donated in whole or in part. These funds shall be used to subsidize, when subsidization is necessary, the Preferred Caterer.

(xvii) The Private Caterer must have a locally grown food quality assurance program similar to that required of the Preferred Caterer, which covers the food or products that are not provided by nationally recognized vendors. This quality assurance program shall set minimum standards for locally grown or produced goods and services similarly to that required by the Preferred Caterer.

(xviii) Fees associated with catering services shall be the responsibility of the Applicant and cannot be waived.

(xix) Security.

(A) The Private Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee can not be waived.

(C) Fees associated with catering services, including the Preferred Caterer or any Private Caterer shall be the responsibility of the Applicant.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state of other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and

duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulleting boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) Waivers.

The Budget Development and Board Operations Subcommittee may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. The Subcommittee may also waive the requirements of the use of the Preferred Caterer, upon a finding that the catering service requested cannot be reasonably accommodated by the Preferred Caterer. Any approved waiver must still require compliance with all other provisions of this Rule. Notwithstanding any provision of this Rule, provisions of this Rule which impose requirements upon a Private Caterer may not be waived. The waiver request must be submitted in writing to the Executive Director, for consideration by the Subcommittee at its next regularly scheduled meeting, and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the Subcommittee to assure the appropriate protection of facilities, grounds and persons. An appeal to the Board of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Private Caterer fee. At any time a Private Caterer is used on the Capitol Hill Complex in accordance with this Rule, the applicant shall pay a fee based upon the number of people at the event. This fee shall be determined by the Board and shall be listed on the Board's fee schedule.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the

complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

(i) Kletting Room located in the Senate Building;

(ii) Olmstead Room located in the Senate Building;

(iii) Spruce Room located in the Senate Building;

(iv) Beehive Room located in the Senate Building;

(v) Seagull Room located in the Senate Building;

(vi) Copper Room located in the Senate Building;

(vii) Rooms B110 and 1112 in the State Office Building;

(viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;

(ix) Room 170 located in the Capitol; and

(x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) During the hours of 11:00 a.m. through 1:30 p.m., in order to qualify for the free room rental rate for all rooms located in the Senate Building Arsenal Hill Conference Center, the applicant must provide to the Executive Director a copy of the agreement to use the Preferred Caterer for providing food services during the room rental or evidence that the people attending have purchased meals from the Preferred Caterer.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if,in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of $50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use
January 7, 2010 63C-9-101 et seq.
Notice of Continuation February 16, 2005

R151. Commerce, Administration.
R151-1. Department of Commerce General Provisions.
R151-1-1. Oaths to Investigators and to Members of Boards and Commissions.

Each investigator employed by the Department of Commerce, and each board member and commission member working in conjunction with the Department or its Divisions, shall take the oath of office required by the Utah Constitution, Art. IV, Sec. 10. The oath of office may be administered by the following personnel within the Department: Department Executive Director and Deputy Director, Division Directors, Administrative Law Judges, Commerce Managers II, Division Assistant Directors, and Division Bureau Managers.

R151-1-2. Electronic Meetings.

In compliance with Utah Code Ann. Section 52-4-207, the following shall apply to electronic meetings held by any "public body" (as defined in Utah Code Ann. Section 52-4-103) within the Department of Commerce.

(1) Electronic meetings are not prohibited but may be limited by an agency director or designee based on budget, public policy, or logistical considerations.

(2)(a) An agency director or designee, on his/her own initiative, may establish an electronic meeting.

(b) Any member of a public body may also request an agency director to establish an electronic meeting.

(i) Any such request shall be made as far in advance as possible, but not less than three business days prior to a meeting to allow for arrangements to be made for the electronic meeting. The agency director or designee may shorten this time frame upon a determination of reasonable need.

(ii) The agency director or designee may determine whether such a request should be granted. No vote of the public body is required.

(3) A quorum of the public body is not required to be present at a single anchor location for an electronic meeting.

(4) Any number of separate connections for members of a public body is allowed for an electronic meeting, unless an agency director or designee limits the number of separate connections based on available equipment capability or other relevant and reasonable considerations.

KEY: oath, board members, investigators, electronic meetings

June 15, 2006	**Art. IV, Sec. 10**
Notice of Continuation January 25, 2010	**53-13-101(12)**
	13-1-6(1)
	13-1-2(1)(b)
	52-4-103
	52-4-207

R151. Commerce, Administration.
R151-46b. Department of Commerce Administrative Procedures Act Rules.
R151-46b-1. Title.

These rules are known as the "Department of Commerce Administrative Procedures Act Rules."

R151-46b-2. Definitions.

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, which apply to these rules:

(1) "Agency head" means the executive director of the department, the director of a division, or the committee's residential and small commercial representative, respectively, as used in context.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for licensure, certification, registration, permit, or other right or authority granted by the department.

(4) "Committee" means the Committee of Consumer Services of the department.

(5) "Department" means the department, a division, or the committee, respectively or collectively, as used in context.

(6) "Division" means a division of the department.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

(8) "Motion" means a request for any action or relief submitted to the presiding officer in an adjudicative proceeding.

(9) "Petition" means the charging document, typically incorporated by reference into a notice of agency action, setting forth a statement of jurisdiction, statement of allegations, statement of legal authority, and prayer for relief.

(10) "Pleadings" include the notice of agency action or request for agency action, any response filed thereto, the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding, any request for agency review or agency reconsideration, any response filed thereto, and any motions, briefs or other documents filed by the parties on agency review.

(11) "Record" means the record of a hearing in an adjudicative proceeding or the record of the entire adjudicative proceeding, as used in context.

R151-46b-3. Authority - Purpose.

These rules are adopted by the department under the authority of Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures which govern adjudicative proceedings before the department.

R151-46b-4. Supplementing Provisions of Rule R151-46b.

Any provision of these rules may be supplemented by division or committee rules unless expressly prohibited by these rules.

R151-46b-5. General Provisions.

(1) Purpose.

These rules are intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period. No additional time is provided if service is accomplished by facsimile or other electronic means.

(b) Subject to the provisions of Subsections R151-46b -5(5)(b) and -9(9)(c)(ii), for good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon written application from either party.

(5) Extension of Time; Continuance of Hearing.

(a) When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(i) whether there is good cause for granting the extension or continuance;

(ii) the number of extensions or continuances the requesting party has already received;

(iii) whether the extension or continuance will work a significant hardship upon the other party;

(iv) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(v) whether the other party objects to the extension or continuance.

(b)(i) Notwithstanding the provisions of Subsection R151-46b-5(2) or any other provision of these rules, and except as provided in Subsection (5)(b)(ii), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(ii) Notwithstanding the provisions of Subsection (5)(b)(i), an extension of a time period or a continuance may exceed the time restriction outlined in Subsection (5)(b)(i) only if:

(A)(I) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(II) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds that the withdrawal was for the purpose of delaying the hearing; or

(III) a parallel criminal proceedings exists based on facts at issue in the administrative proceeding; and

(B) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(iii) The failure of the presiding officer to comply with the requirements of this Subsection

(5)(b) is not a basis for dismissal of the matter.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction

on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

R151-46b-6. Representation of Parties.

(a) A party may be represented by counsel or may represent oneself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

R151-46b-7. Pleadings.

(1) Docket Number and Title.

An agency shall assign a docket number to each notice of agency action and request for agency action. The docket number shall consist of a letter code identifying the agency in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; D-Diversion; NAFA-New Automobile Franchise Act; PVFA-Powersport Vehicle Franchise Act; RE-Real Estate, AP-Real Estate Appraisers; SD-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title that shall be in substantially the following form:

TABLE I

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BEFORE THE (DIVISION/COMMITTEE)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of              (Notice of Agency Action)
(the application,             (Request for Agency Action)
petition or license
of John Doe)                  No. AA-2000-001
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(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8 1/2 x 11 inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63G-4-201(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63G-4-203(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion that is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63G-4-102(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless, subject to Subsections R151-46b-5(5)(b) and -9(9)(c)(ii), the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

(i) The presiding officer may permit or require oral argument on a motion.

(ii) Any oral argument on a motion shall be scheduled to take place no more than 10 calendar days after the day on which the final submission on the motion is filed.

(e) Ruling on a motion.

(i) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(ii) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer made the verbal ruling.

(iii) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

(A) oral argument; or

(B) if there was no oral argument, the final submission on the motion.

(iv) The failure of the presiding officer to comply with the requirements of this Subsection (6)(e) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of the motion.

R151-46b-8. Filing and Service.

(1) Filing.

(a) Pleadings shall be filed with the agency in which the adjudicative proceeding is being conducted. If an administrative law judge is conducting part of the adjudicative proceeding, then the party shall cause a courtesy copy of such pleadings to be filed with the administrative law judge. The filing of discovery documents is governed by Subsection R151-46b-9(11)(a).

(b) Manner and time of filing.

(i) A filing may be accomplished by hand delivery or by mail to the agency in which the adjudicative proceeding is being conducted.

(ii)(A) A filing may also be accomplished by facsimile or other electronic means, so long as the original document is also mailed to the agency the same day, as evidenced by a postmark or mailing certificate.

(B) Filing by electronic means is complete upon transmission if transmission is completed during normal business hours at the place receiving the filing; otherwise, filing is complete on the next business day.

(C) A filing by electronic means is not effective unless the agency receives all pertinent pages of the document transmitted.

(D) The burden is on the party filing the document to ensure that a transmission is properly completed.

(2) Service.

Pleadings filed by the parties and documents issued by the presiding officer shall be served upon the parties to the adjudicative proceeding concurrently with the filing or issuance thereof. The party who files the pleading shall be responsible for service of the pleading. The presiding officer who issues a document shall be responsible for service of the document.

(a) Service may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the agent of the person being served. If a party is represented by an attorney, service may be made upon the attorney.

(b) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient. Service by mail is complete upon mailing. Service may also be accomplished by facsimile or other electronic means. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(c) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

```
CERTIFICATE OF SERVICE
     I hereby certify that I have this day served the
foregoing document upon the parties of record in this
proceeding set forth below (by delivering a copy thereof
in person) (by mailing a copy thereof, properly addressed
by first class mail with postage prepaid, to) (by
facsimile/electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))

Dated this (day)  day of (month), (year).

(Signature)
(Title)
```

R151-46b-9. Discovery - Formal Proceedings Only.

This rule applies only to formal adjudicative proceedings. Discovery is prohibited in informal adjudicative proceedings.

(1) Scope of discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

(b) Subject to the provisions of Subsections R151-46b-9(1)(c) and R151-46b-9(3)(a), a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-46b-9(1)(a) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including his attorney, consultant, insurer or other agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(c) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Subsection R151-46b-9(1)(a) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Subsection R151-46b-9(3)(a).

(2) Disclosures Required By Initial Prehearing Order.

(a) Pursuant to the initial prehearing order issued in accordance with Subsection R151-46b-9(9)(c), the presiding officer may require each party to disclose:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, identifying the subjects of the information; and

(ii) a copy of, or a description by category and location of, and reasonable access to, all discoverable documents, data compilations, and tangible things which are in its possession, custody, or control and which support its claims or defenses.

(b) The order shall not require disclosure of expert testimony, which is governed by Subsection R151-46b-9(3)(a). The order also shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(c) The disclosures required by Subsection R151-46b-9(2)(a) shall be made within 14 days after the written initial prehearing order is issued unless that order provides otherwise. A party joined after the initial prehearing conference shall make these disclosures within 30 days after being served unless otherwise stipulated by the parties or ordered by the presiding officer. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

(3) Disclosures Otherwise Required.

(a) Expert Testimony.

A party shall disclose the name, address and telephone number of any person who may be called as an expert witness at the hearing.

(i) Except as otherwise stipulated by the parties or ordered by the presiding officer, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study

and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(ii) Unless otherwise stipulated by the parties or ordered by the presiding officer, the disclosures required by Subsection R151-46b-9(3)(a) shall be made within 30 days after the expiration of discovery as provided by Subsection R151-46b-9(7)(b) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-46b-9(3)(a)(i), within 60 days after the disclosure made by the other party.

(b) Prehearing Disclosures.

In addition to the disclosures required pursuant to Subsection R151-46b-9(3)(a), a party shall disclose the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(i) the name and, if not previously provided, the address and telephone number of each witness, including the general scope of their anticipated testimony, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(ii) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(iii) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at least 30 days before the hearing unless otherwise ordered by the presiding officer. A party may serve and file any objection to the use under Subsection R151-46b-9(13)(i) of a deposition designated by another party under Subsection R151-46b-9(3)(b)(ii) and any objection, together with the grounds therefore, as to the admissibility of materials identified under Subsection R151-46b-9(3)(b)(iii). Any such objections shall be made within 14 days after service of the disclosures required by Subsection R151-46b-9(3)(b) unless a different time is specified by the presiding officer. Objections not timely made under this Subsection, other than objections on grounds of relevancy, shall be deemed waived unless excused by the presiding officer for good cause shown.

(c) Form of Disclosures.

Unless otherwise stipulated by the parties or ordered by the presiding officer, all disclosures under Subsections R151-46b-9(2) through (3)(b) shall be made in writing, signed and served.

(4) Other Discovery Methods.

Parties may also obtain discovery by one or more of the following methods: depositions upon oral examination as provided in these rules, production of documents or things, permission to enter upon land or other property for inspection and other purposes, and physical and mental examinations.

(5) Limits on Use of Discovery.

The frequency and extent of use of the discovery methods set forth in Subsection R151-46b-9(4) shall be limited by the presiding officer if it is determined that:

(a) the discovery sought is unreasonably cumulative, duplicative or is obtainable from some other 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 information 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 litigation. The presiding officer may act on his own motion after reasonable notice or pursuant to a motion under Subsection R151-46b-9(6).

(6) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) the certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(7) Timing, Completion and Sequence of Discovery.

(a) A party may not use any of the discovery methods described in Subsection R151-46b-9(4) prior to the date that the disclosures required in the initial prehearing order are received unless otherwise stipulated by the parties or ordered by the presiding officer. If the initial prehearing order does not require the parties to make disclosures, then the parties may use those discovery methods at any time after the date of the initial prehearing conference.

(b) Unless otherwise stipulated by the parties or ordered by the presiding officer for good cause shown, all discovery, except for prehearing disclosures governed by Subsection R151-46b-9(3), shall be completed within 120 days after the date of the initial prehearing conference. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to shorten this time period include whether that party's interests will be prejudiced if the time period is not shortened, whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time, and whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-46b-5(5), whether the complexity of the case warrants additional discovery time, and whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(c) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, and except as otherwise provided by these rules, methods of discovery described in Subsection R151-46b-9(4) may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(8) Supplemented Disclosures and Amended Responses. A party who has made a disclosure under Subsections (2) or (3) or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include information thereafter acquired if ordered by the presiding officer or in the following

circumstances:

(a) A party shall supplement at appropriate intervals disclosures under Subsections R151-46b-9(2) and (3) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Subsection R151-46b-9(3)(a), the duty extends to information contained in the report, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Subsection R151-46b-9(3)(b) are due.

(b) A party shall amend a prior response to a request for production within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(9) Initial Prehearing Conference.

(a) The party initiating the adjudicative proceeding shall file a written request for the scheduling of an initial prehearing conference and provide a copy to the presiding officer within 10 days after the filing of the response to the notice of agency action or within 10 days after the filing of the request for agency action in a case commenced by such a request. The presiding officer shall contact the parties upon receiving that request for the scheduling of the conference and arrange for that conference to be held at the earliest feasible time. Nothing in this rule shall limit the ability of the presiding officer to contact the parties and schedule the conference on his own initiative.

(b) The conference may be conducted either in person or telephonically. All parties, or their counsel, shall participate in the conference. The conference shall include discussion of discovery, prehearing motions and other matters pertaining to the orderly management of the proceeding.

(c) During the initial prehearing conference, the presiding officer shall issue a verbal order regarding the following matters, and shall issue a written order to the same effect after the conference is concluded:

(i) scheduling any additional prehearing conferences;

(ii) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;

(iii) modifying, if appropriate, any of the deadlines for disclosures under Subsection R151-46b-9(3);

(iv) resolving any discovery issues;

(v) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and any other necessary or appropriate prehearing matters;

(vi) scheduling a hearing date, which notwithstanding the provisions of Subsection R151-46b-5(2), shall provide for the hearing to be concluded not more than 180 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued; and

(vii) dealing with any other matters appropriate in the circumstances of the case.

(d) A party joined after the initial prehearing conference is bound by the order issued as a result of that conference, unless the presiding officer orders on stipulation or motion a modification of that order. Any such stipulation or motion shall be filed within a reasonable time after joinder.

(e) Notwithstanding Subsection R151-46b-9(7)(b) or any other provision of these rules that provides a maximum time frame for any prehearing matter, the presiding officer shall schedule all prehearing matters consistent with Subsection R151-46b-9(9)(c)(vi). The presiding officer may:

(i) adjust any time frames as necessary to accommodate Subsection R151-46b-9(9)(c)(vi); and/or

(ii) schedule any appropriate prehearing matters to occur concurrently.

(10) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(a) Every disclosure made pursuant to Subsections R151-46b-9(2) and (3) shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(b) Every request for discovery or any response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(c) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(11) Filing of Discovery Requests or Disclosures.

(a) Unless otherwise ordered by the presiding officer, a party shall not file any request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service. Unless otherwise ordered by the presiding officer, a party shall not file any of the disclosures required by the initial prehearing order pursuant to Subsection R151-46b-9(2) or any of the disclosures required by Subsection R151-46b-9(3)(a), but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service. Except as provided in Subsection R151-46b-9(13)(f)(i) or unless otherwise ordered by the presiding officer, depositions shall not be filed. A party shall file the disclosures required by Subsection R151-46b-9(3)(b) unless otherwise ordered by the presiding officer.

(b) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request for discovery or the response which is at issue.

(12) Subpoenas.

(a) Every subpoena shall be issued by the presiding officer under the seal of the department or applicable division, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce books, papers, or tangible things designated therein, and in the case of a subpoena for a deposition, to also permit inspection and copying of such items. A subpoena for a deposition must limit its designation of such items to matters which properly fall within the scope of discoverable information as provided in Subsection R151-46b-9(1)(a). The presiding officer shall issue a subpoena, or a subpoena for the production of documentary

evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Service of a subpoena upon a person named therein shall be accompanied by a tender of fees for one day's attendance and the mileage allowed by law.

(c) A subpoena commanding a person to appear at a hearing or a deposition being held in this state may be served at any place within this state. A person who resides in this state may be required to appear at a deposition only in the county where the person resides, or is employed, or transacts business in person, or at such other place as the presiding officer may order. A person who does not reside in this state may be required to appear at a deposition only in the county of this state where the person is served with a subpoena, or at such other place as the presiding officer may order.

(d) A subpoena commanding a person to appear at a deposition or to produce or allow the inspection of documents, tangible things or premises located outside this state shall be served in accordance with the requirements of the jurisdiction in which such service is made.

(e) Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the presiding officer may:

(i) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(f) In the case of subpoenas requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena a written objection to production, inspection or copying of any or all of the designated materials. If such objection is made, the party serving the subpoena shall not be entitled to production, inspection or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

(13) Depositions Upon Oral Examination: General provision; Persons who may be deposed.

Under the limited circumstances prescribed in this Subsection, a party may with leave of the presiding officer take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of any party in the proceeding. The attendance of witnesses may be compelled by subpoena as provided in Subsection R151-46b-9(12). Depositions of expert witnesses shall not be permitted.

(a)(i) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview. A party shall not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of any party in the proceeding and:

(A) has refused a reasonable request by the moving party for an informal interview;

(B) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;

(C) has refused to answer reasonable questions propounded to him by that party in an informal interview; or

(D) will be unavailable to testify at the hearing.

In deciding whether to issue such an order, the presiding officer shall take into consideration the probative value which the testimony of that witness is likely to have in the proceeding. The burden of demonstrating the need for a deposition shall be upon the party requesting the deposition.

(ii) For an informal interview:

(A) a party or counsel has no obligation to notify the other party or counsel of an intention to hold an informal interview with a potential witness;

(B) a party or counsel does not have a right to be present during an informal interview with a potential witness conducted by another party or counsel; and

(C) there is no requirement to have a potential witness placed under oath before providing information in an informal interview.

(b) Notice of Examination: General Requirements; Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(i) A party permitted to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

(ii) The parties may stipulate in writing or, upon motion, the presiding officer may order the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under Subsection R151-46b-9(13)(c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in this rule, and the certification of the officer required by Subsection R151-46b-9(13)(f), shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(iii) The notice to a party deponent may be accompanied by a request made in compliance with Subsection R151-46b-9(14) for the production of documents and tangible things at the taking of the deposition.

(iv) A party may, in his notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(v) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.

Examination and cross-examination of witnesses may proceed as permitted at the hearing under the provisions of the Utah Administrative Procedures Act and the Utah Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken

stenographically or recorded by any other means ordered in accordance with Subsection R151-46b-9(13)(b)(ii) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answer verbatim.

(d) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of either a party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition, as provided in Subsection R151-46b-9(6). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as though signed, unless a motion to suppress is filed pursuant to Subsection R151-46b-9(13)(i)(c)(v) and the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(i) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the presiding officer, he shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send the sealed transcript of the deposition to the attorney who arranged for the transcript to be made. If the party taking the deposition is not represented by an attorney, the transcript of the deposition shall be filed with the division or committee before which the proceeding is being held unless otherwise ordered by the presiding officer. An attorney receiving the transcript of the deposition shall store it under conditions that will protect it against loss, destruction, tampering or deterioration. The officer shall file, and serve upon all parties, a certificate indicating to whom he delivered the transcript, and the date he did so.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he may either offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to the original transcript of the deposition pending final disposition of the case.

(ii) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(i) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(ii) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Persons Before Whom Depositions May Be Taken.

(i) Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the presiding officer in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(ii) In a foreign country, depositions may be taken:

(A) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(B) before a person commissioned by the presiding officer. The person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony. A commission shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission that the taking of the deposition in any other manner in impracticable or inconvenient; and a commission may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

(iii) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding.

(i) Use of Depositions in Agency Adjudicative Proceedings.

(a) Use of Depositions.

At a hearing or upon argument of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Utah Rules of Evidence.

(ii) The deposition of either a party or anyone who, at the

time of taking the deposition, was an officer, director, or managing agent, or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose.

(iii) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds that:

(A) the witness is dead;

(B) the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought, in fairness, to be considered with the part introduced, and any party may introduce any other parts.

All depositions lawfully taken and duly filed in any court or another agency of this state may be used as if originally taken in the pending proceeding. A deposition previously taken may also be used as permitted by the Utah Rules of Evidence.

(b) Objections to Admissibility.

Subject to the provisions of Subsection R151-46b-9(13)(i)(c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(i) All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(iv) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(v) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(14) Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) Scope.

Upon approval by the presiding officer, any party may serve on any other party a request:

(i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Subsection R151-46b-9(1)(a) and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection R151-46b-9(1)(a).

(b) Procedure.

Before permitting a party to serve a request for production of documents, the presiding officer must first find that the party seeking such leave has demonstrated that the records he seeks have not already been provided to him in the initial disclosures submitted by another party. After approval by the presiding officer, the request may be served upon any party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Subsection R151-46b-9(16) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(15) Physical and Mental Examination of Persons.

(a) Order for Examination.

When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or person by whom it is to be made.

(b) Report of Examining Physician.

(i) If requested by the party against whom an order is made under Subsection (a) of this rule or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled, upon request, to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of

examination of a person not a party, the party shows that he is unable to obtain it. The presiding officer on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report, the presiding officer may exclude his testimony if offered at the hearing.

(ii) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(iii) Subsection R151-46b-9(15)(b) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise. Subsection R151-46b-9(15)(b) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

(16) Motion to Compel Discovery; Sanctions for Failure to Make or Cooperate in Discovery.

(a) A party may request entry of an order compelling discovery as follows:

(i) If a party fails to make disclosures required by an initial prehearing order pursuant to R151-46b-9(2), or a party fails to make the disclosures required by R151-46b-9(3), or a deponent fails to answer a question propounded under Subsection R151-46b-9(13), or a corporation or other entity fails to make a designation under Subsection R151-46b-9(13)(b)(iv), or a party, in response to a request for inspection submitted under Subsection R151-46b-9(14), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling such disclosures, or an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the presiding officer denies the motion in whole or in part, the presiding officer may make such protective order as he would have been empowered to make on a motion made pursuant to Subsection R151-46b-9(6).

(ii) For purposes of Subsection R151-46b-9(16)(a)(i), an evasive or incomplete answer is to be treated as a failure to answer.

(b) Discovery Sanctions.

(i) If a party or other person fails to comply with an order compelling discovery issued by the presiding officer, the department may seek enforcement of that order by seeking civil enforcement in the district court as provided in Section 63G-4-501.

(ii) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to obey an order or provide or permit discovery, including an order made under Subsection R151-46b-9(16)(a), the presiding officer may make such orders in regard to the failure as are just, including:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iii) If a party fails to comply with an order under Subsection R151-46b-9(15)(a) requiring him to produce another for examination, the presiding officer may enter any order listed in paragraphs (A), (B), and (C) of Subsection R151-46b-9(16)(b)(ii) unless the party failing to comply shows that he is unable to produce such person for examination.

(iv) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, fails to serve a written response to a request for inspection submitted under Subsection R151-46b-9(14), after proper service of the request, the presiding officer on motion may make such orders in regard to the failure as are just and may take any action authorized under paragraphs (A), (B) and (C) of Subsection R151-46b-9(16)(b)(ii). In lieu of any order or in addition thereto, the presiding officer shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the presiding officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in Subsection R151-46b-9(16) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Subsection R151-46b-9(6).

(v) The failure to comply with Subsections R151-46b-9(1) through R151-46b-9(15) or to honor any certification made under those rules may be found by the presiding officer to be a default under Section 63G-4-209.

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

(a) required by statute or rule and not waived by the parties; or

(b) permitted by statute or rule and timely requested.

(2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(a) the time period for filing a response to a notice of agency action if a response is required or permitted;

(b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(c) the filing of the request for agency action.

(3) Scheduling of Hearings.

(a)(i) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(ii) Notwithstanding the provisions of Subsection R151-46b-5(2), the hearing in any formal or informal adjudicative proceeding shall be concluded not more than 180 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(b) Subject to the provisions of Subsection R151-46b-5(5)(b), the presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

(4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding

is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

(5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

(6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

(a) opening statement of the party with the burden of proof;

(b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;

(d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(e) rebuttal case by the party which has the burden of proof;

(f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

(7) Testimony Under Oath.

All testimony presented at a hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath administered by the presiding officer.

(8) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

(9) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

(10) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

(11) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63G-4-209, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

(b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(12) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of:

(A) a certified court reporter pursuant to Title 58, Chapter 74, Certified Court Reporters Licensing Act; or

(B) a digital audio or video recording in a commonly used file format.

(ii) Informal Adjudicative Proceedings.

The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.

(c) Record Expense.

The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.

(d) Transcription of Record.

(i) If a party is required by Subsection R151-46b-12(3)(d) regarding agency review proceedings to obtain a transcript of a hearing, the party must ensure that the record is transcribed:

(A) in a formal adjudicative proceeding, by a certified court reporter; or

(B) in an informal adjudicative proceeding, by any certified court reporter or by a person who is not a party in interest. For purposes of this Subsection, "a party in interest" is defined to include a party or a relative of the party. Neither a party's counsel nor an employee of a party's counsel is considered "a party in interest" for purposes of this Subsection.

(ii) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(iii) Pages and lines in a transcript shall be numbered for referencing purposes.

(iv) The party requesting the transcript shall bear the cost of the transcription.

(v) The original transcript of a record of a hearing shall be filed with the presiding officer.

(13) Fees.

(a) Witness Fees.

Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of $18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each

mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.

(b) Interpreter and Translator Fees.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.

(c) Officers and Employees not Entitled to Fees - Exception.

No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.

(d) Only One Fee Per Day Allowed.

No witness shall receive fees in more than one adjudicative proceeding on the same day.

R151-46b-11. Orders.

(1) Requirements.

(a) All orders issued by a presiding officer shall comply with the requirements of Subsection 63G-4-203(1)(i) or Section 63G-4-208, respectively. In the case of default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(b) The presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.

(c) If the presiding officer permits the filing of any post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.

(d) The failure of the presiding officer to comply with the requirements of this Subsection (1) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of any motion.

(2) Effective Date.

The effective date of the final order in an adjudicative proceeding shall be 30 days after the issuance thereof unless otherwise provided in the order.

(3) Clerical Mistakes.

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the department on its own initiative or on the motion of any party and after such notice, if any, as the department orders. Such mistakes may be so corrected at any time prior to the docketing of a petition for judicial review or as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order issued in an adjudicative proceeding by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available.

(a) Agency review is not available as to any order or decision entered by the following agencies:

(i) the Real Estate Appraiser Licensing and Certification Board;

(ii) the Utah Motor Vehicle Franchise Advisory Board; and

(iii) the Utah Powersport Vehicle Franchise Advisory Board.

(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:

(i) Prelitigation proceedings conducted pursuant to Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c) Agency review is not available for any decisions or orders entered by the Division of Corporations and Commercial Code as to the following matters:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; and

(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

(d)(i) Agency reconsideration may be requested for orders or decisions exempt from agency review under Subsections R151-46b-12(2)(a), (b)(ii), and (c) pursuant to Section 63G-4-302.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c).

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and as provided in this Subsection. The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party shall thereafter file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner

described in R151-46b-8, file and serve upon all other parties copies of correspondence, pleadings, and other submissions. If an attorney enters an appearance on behalf of a party, service shall thereafter be made upon that attorney, instead of directly to the party.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the service of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the service of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63G-4-404(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63G-4-301(6).

R151-46b-14. Exhaustion of Administrative Remedies.

(1) In accordance with Section 63G-4-401, an aggrieved party may seek judicial review of a final order only after exhausting all administrative remedies available.

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-46b-15. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review thereof;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(2) The executive director of the department may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review upon a showing by the aggrieved party that the requirements for such relief established in this rule are met.

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-208. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

R151-46b-17. Declaratory Orders.

(1) Filing of Petition for Declaratory Order.

A petition for the issuance of a declaratory order shall be filed with the agency head which has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought. The petition shall set forth the question to be answered, the facts and circumstances related to the question, the statute, rule, or order to be applied to the question, and whether oral argument is sought in conjunction with the petition. The Petition shall comply with the requirements for pleadings set forth in Section R151-46b-7.

(2) Disposition of Petition.

Upon receipt of a petition for a declaratory order, the agency head shall issue a written order in accordance with Subsection 63G-4-503(6) or allow the petition to be denied in accordance with Subsection 63G-4-503(7).

(a) If the agency head issues a declaratory order declaring the applicability of the statute, rule, or order in question to the specified facts and circumstances set forth in the petition without setting the matter for an adjudicative proceeding, the order shall be based upon a review of the petition and oral argument upon the petition, if any; laws and rules applicable to the petition; records maintained by the agency; or any other relevant information reasonably available to the agency.

(b) If the agency head sets the matter for an adjudicative proceeding, a notice of adjudicative proceeding shall be issued in accordance with the requirements of Subsection 63G-4-201(2)(a), to the extent applicable.

(3) Classes of Circumstances in Which the Agency Will Not Issue a Declaratory Order.

The following are defined as classes of circumstances in which the agency will not issue a declaratory order:

(a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions which are not within the jurisdiction of the agency to address;

(c) questions which have already been adequately addressed by an agency in the form of an order;

(d) questions which can be adequately addressed by an agency in the form of informal advice;

(e) questions which are already clearly addressed by statute or rule and do not warrant a declaratory order;

(f) questions which are more properly addressed by statute or rule;

(g) questions which arise out of pending or anticipated litigation in a civil, criminal, or administrative forum which are more properly addressed by that forum; and

(h) questions which are irrelevant, insignificant, meaningless, or spurious.

(4) Agency Review.

The recipient of a declaratory order may request agency review pursuant to Section 63G-4-301 and these rules.

R151-46b-18. Record of an Adjudicative Proceeding.

(1) Definition.

The record of an adjudicative proceeding includes the pleadings and exhibits filed by the parties, the recording of any hearing under Subsection R151-46b-10(11), any transcript of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding.

(2) Retention.

The record of an adjudicative proceeding shall be retained by the department pursuant to Title 63, Chapter 2, the Government Records Access and Management Act ("GRAMA"). As used herein, "department" means the department, division or committee before whom the adjudicative proceeding was conducted.

(3) Classification.

The record of an adjudicative proceeding is classified as a "public record" except as otherwise classified by the department pursuant to GRAMA.

KEY: administrative procedures, adjudicative proceedings, government hearings

January 7, 2010 13-1-6

Notice of Continuation May 3, 2006 63G-4-102(6)

R152. Commerce, Consumer Protection.
R152-1. Utah Division of Consumer Protection: "Buyer Beware List".
R152-1-1. Purposes, Policies and Rules of Construction.

A. These rules are promulgated pursuant to Subsection 13-2-5(1) to assist the orderly administration of the statutes listed in Utah Code Section 13-2-1.

B.(1) These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to general authority of Utah Code Section 13-2-5, and specific authority of the following statutory sections:

(a) Utah Code Subsection 13-11-8(2);

(b) Utah Code Subsection 13-15-3(1); and

(c) Utah Code Section Section 13-16-12.

(2) Without limiting the scope of any statute or rule, this rule is intended to promote its stated purposes and policies. The purposes and policies of this rule are to:

(a) protect consumers from individuals and businesses who have engaged in and committed deceptive acts or practices, or have engaged in and committed unconscionable acts or practices.

(b) supply consumers with pertinent information on the nature of those individuals or businesses who may be engaging in and committing deceptive acts or practices, or may be engaging in and committing unconscionable acts or practices, so as to aid consumers in their decision making.

(c) encourage the development of fair consumer sales practices and wise decision making by consumers in all their consumer purchase decisions.

R152-1-2. Definitions.

A. For the purposes of this rule:

(1) "Buyer Beware List" means the list of individuals or business compiled by the Division in accordance with this rule.

(2) "Department" means the Utah Department of Commerce.

(3) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.

(4) "Division" means the Utah Department of Commerce, Division of Consumer Protection.

(5) "Emergency" means facts known or presented to the Utah Department of Commerce, Division of Consumer Protection that show:

(a) an immediate and significant danger to the public health, safety, or welfare exists with respect to the statutes listed in Utah Code Section 13-2-1; and

(b) the threat requires immediate action by the Division.

(6) "Executive Director" means the executive director of the Utah Department of Commerce.

(7) "Order" means an order of adjudication or a final order by default issued by the Utah Department of Commerce, Division of Consumer Protection after proper notice and hearing, as applicable, in accordance with Utah Code Title 63G, Chapter 4, Administrative Procedures Act.

R152-1-3. Placement on "Buyer Beware List".

A.(1) The Division shall place the name of an individual or business on the "Buyer Beware List" if the Division concludes through issuance of an order that the individual or business has violated any of the statutes listed in Utah Code Section 13-2-1.

(2) The Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or business on the Buyer Beware List unless notice has otherwise been given by a previously issued Division subpoena or written inquiry or unless the Director finds that an emergency exists. All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

B. (1) When the Director finds the public interest would be served, the Division may place the name of an individual or business on the "Buyer Beware List" for:

(a) failure or refusal to respond to an administrative subpoena of the Division; or

(b) failure or refusal to respond to a consumer complaint on file with the Division alleging violation of one or more of the acts administered by the Division after the business or individual has received notification from the Division and had an opportunity to respond to the Division and address the complaint.

(2) Unclaimed, returned or refused certified mail properly addressed to the individual or business that is received back by the Division shall constitute proof of failure or refusal to respond.

C.(1) Prior to placement on the Buyer Beware List for any reason set forth in R152-1-3B the Division shall, upon receipt of a consumer complaint, make reasonable efforts to communicate with an individual or business identified in the complaint including:

(a) at least one (1) initial written notice by certified mail or facsimile transmission;

(b) at least one (1) initial telephone call; and

(c) if the individual or business identified in the complaint is a Utah resident at least one initial (1) face to face contact by a Division representative either at the Division's offices or at the individual's or business' Utah address.

(2)(a) If the initial efforts set forth at R152-1-3C(1) have proven unsuccessful the Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or business on the Buyer Beware List unless:

(i) notice has otherwise been given by a previously issued Division subpoena or written inquiry properly addressed; or

(ii) the Director finds that an emergency exists.

(b) All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

D. Each listing on the Buyer Beware List shall contain a listing of the individual's or businesses:

(1) name(s), including "doing businesses as";

(2) address(es);

(3) phone number(s); and

(4) a detailed basis for the individual or business being placed on the list, including whether:

(a) an administrative fine has been assessed and if so what amount; and

(b) a cease and desist order has been issued in accordance with Utah Code Section 13-2-6(1).

E. The Buyer Beware List is a public document under Utah Code Title 63G, Chapter 2, Government Records Access and Management Act.

R152-1-4. Removal from "Buyer Beware List".

A. The Division of Consumer Protection shall remove the name of the business or individual from the Buyer Beware List if:

(1) the individual or business:

(a) has had no other complaints with respect to a statute listed in Utah Code Section 13-2-1 for a period of 90 consecutive days after being placed on the list; and

(b) otherwise complies with all aspects of the order entered against the individual or business, including the payment of any administrative fines assessed;

(2) pursuant to R152-1-3B(1)(a), when a sufficient response is provided to an outstanding Division subpoena; or

(3) pursuant to R152-1-3B(1)(b), when a satisfactory response is made to outstanding Division inquiries to which the individual or business previously failed or refused to respond.

KEY: consumer protection
January 21, 2010 **13-2-5(1)**
Notice of Continuation October 4, 2005 **13-11-8(2)**
13-15-3(1)
13-16-12

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act.
R152-11-1. Purposes, Rules of Construction.

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules are intended to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

B. Definitions.

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

(4) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

(5) "Service" means performance of labor or any act for the benefit of another.

(6) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

(7) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.

(8) "Service" means performance of labor or any act for the benefit of another.

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

R152-11-2. Exclusions and Limitations in Advertisement.

A. It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any material exclusions, reservations, limitations, modifications, or conditions. The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the features displayed or listed in the advertisement would be deceptive.

(2) An advertisement for an article of clothing must state that there is an additional charge for sizes above or below a certain size if such is the case.

(3) An advertisement which offers floor covering with an additional charge for room sizes above or below a certain size must disclose the nature and amount of additional charge.

(4) An advertisement for a consumer commodity sold from more than one outlet under the direct control of the supplier causing the advertisement to be made must state:

(a) Which outlets within the area served by the publication in which the advertisement appears either have or do not have certain features mentioned in the advertisement;

(b) Which outlets within the area served by the publication in which the advertisement appears charge rates higher than the rate mentioned in advertisement. For example:

TABLE

"Rug Shampooer - $15.00 a day at
West 3rd Street South Office -
all other locations are more."

(c) An advertisement for a consumer commodity sold from outlets not under the direct control of the supplier causing the advertisement to be made does not violate Section 2a(4)(a) or 2a(4)(b) of this rule if it states that the consumer commodity is available only at participating independent dealers.

(5) An advertisement for any consumer commodity requiring installation must reflect the exact price of the commodity and if the price includes installation or if installation is additional.

(6) If the advertised price is available only during certain hours of the day or certain days of the week that fact must be stated along with the hours and days the price is available.

(7) If the advertisement involves or pictures more than one consumer commodity (for example: a sofa, cocktail table and two commodes) and the advertised price applies only if the complete set is purchased, that fact must be stated.

(8) If there is a minimum amount (or maximum amount) that must be purchased for the advertised price to apply, that fact must be stated.

(9) If an advertisement specifies a price for a consumer commodity which includes a trade-in, that fact must be stated. For example: a 6 volt battery for $50.00 plus your old battery.

(10) If there are "additional" items that must be purchased for the advertised price to apply that fact must be so stated.

(11) These examples are intended to be illustrative only and do not limit the scope of any section of the Utah Consumer Sales Practices Act or of this or any other rule or regulation.

B. Offers made orally, such as through radio or television advertising, must include a conspicuously clear and oral statement of any material exclusions, reservations, modifications, or conditions.

C. If an error is made in advertising, either by pricing, wording, picture, or description, it shall be the responsibility of the supplier to retract or correct the error. A retraction is necessary when it cannot be shown that the error was due to the fault of the advertising medium. If it can be documented that the responsibility rests with the advertising medium, a retraction by the supplier is not necessary but the supplier may post a correction in close proximity to the merchandise which was advertised incorrectly.

R152-11-3. Bait Advertising/Unavailability of Goods.

A. Definitions: For the purposes of this rule, the following definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an advertised price within the time limits set forth in paragraph d.

of this rule.

(2) "Salesperson" means the supplier or his agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.

B. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to offer to sell consumer commodities when the offer is not a bona fide effort to sell the advertised consumer commodities. An offer is not bona fide if:

(1) A supplier uses a statement or illustration in any advertisement which would create in the mind of a reasonable consumer a false impression of the grade, quality, quantity, make, value, model, year, size, color, usability, or origin of the consumer commodities offered or which otherwise misrepresents the consumer commodities in such a manner that, on subsequent disclosure or discovery of the true facts, the consumer is diverted from the advertised consumer commodities to other consumer commodities. An offer is not bona fide, even though the true facts are made known to the consumer before he views the advertised consumer commodities, if the first contact or interview is secured by deception.

(2) A supplier discourages the purchase of the advertised consumer commodities in order to sell other consumer commodities. This does not however, prohibit the good faith recommendation concerning a different consumer commodity as it relates to a consumer's particular or unique needs or problems concerning the consumer commodity. The following are examples of acts or practices which raise a presumption that an offer to sell consumer commodities is not bona fide:

(a) Refusal to show, demonstrate, or sell the consumer commodities advertised in accordance with the terms of the advertisement;

(b) Disparagement by the supplier either by acts or words of the advertised consumer commodities or of the guarantee, credit terms, availability of service, repairs, or parts, or any other respects of the consumer commodities;

(c) The failure of a supplier to have available at all outlets under its direct control, or listed in the advertisement, a sufficient quantity of the advertised consumer commodities at the advertised price to meet reasonably anticipated demands, unless the advertisement clearly and adequately disclosed that there is a limited quantity of advertised consumer commodities available and/or that the consumer commodities are available only at the designated outlets;

(d) The failure to give rainchecks to consumers where the advertisement does not disclose that there is a limited quantity or availability of consumer commodities. Suppliers who clearly and consistently post a raincheck policy for public review shall be exempt from this section;

(e) The showing or demonstrating of defective, unusable, or impractical consumer commodities when such defective, unusable, or impractical nature is not fairly and adequately disclosed in the advertisement;

(f) The use of a sales plan or method of compensation for salesperson designed to prevent or discourage them from selling the advertised consumer commodity. This does not, however, prohibit the usual and reasonable use of commissions as a means of compensation;

(g) The demonstration of an advertised consumer commodity in such a manner that makes the commodity appear inferior.

(3) A supplier, in the event of a sale to the consumer of the offered consumer commodities, attempts to persuade a consumer to repudiate the purchase of the offered commodities and purchase other consumer commodities in their stead, by any means, including but not limited to the following:

(a) Accepting a consideration for the offered consumer commodities and then switching the consumer to other commodities;

(b) Delivering offered consumer commodities which are unusable or impractical for the purposes represented or materially different from the offered consumer commodities. The purchase on the part of some consumers of the offered consumer commodities is not in itself prima facie evidence that the offer is bona fide.

(4) A supplier represents in any advertisement, which would create in the mind of the consumer, a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true.

(5) A supplier misrepresents the former price, savings, quality or ownership of any goods sold.

R152-11-4. Use of the Word "Free" etc.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to use the word "free" or other words of similar import or meaning, except when such representation is, in fact, the case and the cost of the "free" consumer commodity is not passed on to the consumer by raising the regular price of the consumer commodity that must be purchased in connection with the "free" offer.

(1) The meaning of "free".

(a) An offer of "free" consumer commodities is based upon a regular price for the merchandise or services which must be purchased by consumers in order to avail themselves of that which is represented to be "free." Such consumer commodities are not free if the supplier will directly and immediately recover, in whole or in part, the costs of the free consumer commodities by marking up the price of the other consumer commodities which must be purchased, by the substitution of inferior consumer commodities, or otherwise.

(b) For the purpose of this rule, all references to the word "free" shall include within the term all other words of similar import and meaning. Representative of the word or words to which this rule is applicable would be the following: "free"; "buy one, get one free"; "two for one sale"; "50% off the purchase of two"; "gift"; "given without charge"; "bonus" or other words and terms which tend to convey to the consuming public the impression that an item of a consumer commodity is "free".

(2) The meaning of "regular price".

(a) The term "regular price" means the price in the same quantity, quality, and with the same service, at which the seller or advertiser of the consumer commodity has openly and actively sold the consumer commodity in the geographic market or trade area in which he is making a "free" or similar offer in the most recent and regular course of business for a reasonably substantial period of time. For consumer products or services which fluctuate in price, the "regular price" shall be the lowest price at which any substantial sales were made during the aforementioned period of time.

(b) Negotiated sales. If a consumer commodity usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another consumer commodity is being offered "free" with the sale, unless the supplier is able to establish a mean, average price immediately prior to the free offer. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(3) Frequency of offers.

(a) In order to establish a regular price over a reasonably substantial period of time, a single kind of consumer commodity should not be advertised with a "free" offer in a trade area for more than six months in any twelve-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any twelve-month period.

B. Disclosure of Conditions. A "free" or similar offer is deceptive unless all the terms, conditions, and obligations upon

which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

C. Combination Offer. This rule does not preclude the use of nondeceptive, "combination" offers in which two or more items of consumer commodities such as, but not limited to, toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single state price, and, in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from settling a price for an item of consumer commodities which also includes furnishing the consumer with a second, distinct item of consumer commodities at one inclusive price if no presentation is made that the latter is free.

D. Introductory Offers. No "free" offers should be made in connection with the introduction of a new consumer commodity offered for sale at a specified price unless the offerer expects in good faith to discontinue the offer after a limited time and to commence selling the consumer commodity promoted separately, at the same price at which it was promoted with a "free" offer.

R152-11-5. Repairs and Service.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs, inspections, or other services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of $25, the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. The consumer's express authorization for such additional repairs, inspections, or other services shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of repairs, inspections, or other services performed and the reason for such repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

R152-11-6. Prizes.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to notify in any way a consumer or prospective consumer that he has (1) won a prize or will receive anything of value, or (2) been selected, or is eligible, to win a prize or receive anything of value, if the

receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and explicitly discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. If a supplier states or implies a value to the prize or thing of value the true market value of such prize must be accurately stated. A supplier must further state that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesman will be visiting the consumer's or prospective consumer's residence; if such is the case.

B. A statement to the effect that the consumer or prospective consumer must observe or listen to a "demonstration" or promotional effort in connection with a consumer transaction does not satisfy the requirements of this rule, unless it is reasonably clear from the information supplied to the consumer that the supplier is in the business of making consumer sales or that the intent is to encourage or induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction.

R152-11-7. New for Used.

A. Except as provided in Section 7c and d of this rule, it shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent, directly or indirectly, that an item of consumer commodity, or that any part of an item of consumer commodity, is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof, or to fail to make clear and conspicuous disclosures, prior to time of offer, to the consumer or prospective consumer that an item of consumer commodity has been used.

B. For the purpose of this rule, "used" shall include rebuilt, re-manufactured, reconditioned consumer commodity or parts, thereof, or used either as a demonstrator or as a consumer commodity by a previous consumer.

C. For the purpose of this rule, a returned consumer commodity which has not been used by a previous purchaser, shall be considered new or unused.

D. The disclosure that an item of consumer commodity has been used or contains used parts as required by Section 7a may be made by use of words such as, but not limited to, "used"; "second hand"; "repaired"; "re-manufactured"; "reconditioned"; "rebuilt"; or "reline"; whichever is applicable to the item of consumer commodity involved.

R152-11-8. Substitution of Consumer Commodities.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to furnish similar consumer commodities of equal or greater value when there was no intention to ship, deliver or install the original consumer commodities ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule if such substitution is first approved by the consumer.

B. For the purpose of this rule, consumer commodities may not be considered of "equal or greater value" if they are not substantially similar to the consumer commodity ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted consumer commodities at a lower price than the "regular price".

C. It will be assumed that a supplier had no intention to deliver, ship, or install the original ordered or substitute goods if the supplier fails to ship, deliver or install the goods within 30 days of the date of the order, purchase or of the notice of delay and fails to notify the purchaser of any delay or further delay; unless the supplier can show that it has made a good faith effort to ship, deliver or install the goods or to notify the purchaser of any delay or further delay within the prescribed period.

R152-11-9. Direct Solicitations.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of $25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds $25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or

(iv) discloses its refund/return policy in its advertising,

catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is $25 or more.

R152-11-10. Deposits and Refunds.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(1) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the consumer commodities in relation to which the deposit has been made by the consumer if such consumer commodities are unique; provided that a supplier may continue to sell or offer to sell consumer commodities on which a deposit has been made if he has available sufficient consumer commodities to satisfy all consumers who have made deposits;

(2) All deposits accepted by a supplier must be evidenced by dated receipts, provided to the consumer at the time of the transaction, stating the following information:

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);

(b) The cash selling price;

(c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

(e) Whether the deposit is refundable and under what conditions; and

(f) Any additional cost such as delivery charge.

(3) For the purpose of this rule "deposit" means any payment in cash, or of anything of value or an obligation to pay including, but not limited to, a credit device transaction incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for consumer commodities.

B. It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

(1) Used, damaged or defective products, unless they are clearly marked "as is" or with some other conspicuous disclaimer of any implied or express warranty, and also clearly marked that no refund will be given; or

(2) Non-used, non-damaged or non-defective products unless:

(a) Such non-refund, exchange or credit policy, including any applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale, the store entrance;

(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

(b) The consumer commodities are food, perishable items, merchandise which is substantially custom made or custom finished.

(3) For the purpose of this rule "refund" means cash if payment were made in cash provided that if payment were made by check the refund may be delayed until the check has cleared; and further provided that if payment were made by debit to a credit card or other account, then refund may be made by an appropriate credit or refund pursuant to the applicable law.

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

(1) In determining the amount required to be refunded under this rule, the supplier may take into consideration the nature of the commodity returned, the condition of the commodity returned, shipping charges if agreed to and any lawful restocking fee.

(2) For purposes of this rule, "reasonable time" means within 30 days of the date of the deposit unless a longer period is justified due to the nature of the commodity returned or any agreement between the parties.

D. No deposit accepted by a supplier to secure the value of equipment or materials provided to a consumer for the consumer's use in any business opportunity where it is anticipated by either the consumer or the supplier that some remuneration will be paid to the consumer for services or goods supplied to the supplier or to some third party in the behalf of the supplier shall exceed the actual cost of the supplies or equipment paid by the supplier or any person acting on behalf of the supplier.

R152-11-11. Franchises, Distributorships, Referral Sales.

A. Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly indicated:

(1) "Referral Selling" means any consumer transaction where the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers.

(2) The term "franchise or distributorship" means a contract or agreement requiring substantial capital investment, either expressed or implied, whether oral or written, between two or more persons:

(a) Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) Wherein the purchaser, is granted the right to offer, sell and distribute consumer commodities manufactured, processed, distributed or, in the case of services, organized and directed by the seller; and the purchaser has not been previously engaged in such business opportunity;

(c) Wherein the franchise or distributorship as an independent business constitutes a component of seller's distribution system; or

(d) Wherein the operation of the purchaser's business is substantially reliant on sellers for the basic supply of consumer commodities.

B. Franchises and Distributorships. It shall be an unfair or deceptive act or practice for any person in the trade or commerce of establishing a franchise, distributorship to:

(1) Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;

(2) Misrepresent by failure to disclose or otherwise, the known required total investment for such franchise or distributorship;

(3) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the particular franchise or distributorship to sustain;

(4) Misrepresent the quantity or quality of the products to be sold or distributed through the franchise or distributorship;

(5) Misrepresent the training and management assistance available to the franchise or distributorship;

(6) Misrepresent the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship;

(7) Misrepresent the size, choice, potential or demographic feature of a franchise territory or misrepresent the number of present or future franchises or distributorships within the franchise territory;

(8) Misrepresent by failure to disclose or otherwise, the termination, transfer or renewal provision of a franchise or distributorship agreement;

(9) Falsely claim or infer that a primary marketer of trademark products or services sponsors or participates directly or indirectly in the franchise or distributorship operation;

(10) Assign a so-called exclusive territory encompassing the same area to more than one franchise;

(11) Provide vending locations for which written authorizations have not been granted by the property owners or lessees of the premises;

(12) Provide vending machines or displays of a brand or kind different from or inferior to those promised by the seller;

(13) Fail to provide to the purchaser a written contract which includes the following provisions:

(a) The total financial obligation of the purchaser to the seller;

(b) The date of delivery of the purchaser consumer commodity to the purchaser if the seller is responsible for delivery of such consumer commodity;

(c) The description and quantity of consumer commodities to be delivered to the purchaser if the seller is responsible for delivery of such consumer commodities; and

(d) All other disclosures and provisions required in the preceding subsections;

(14) Fail to honor his contract as required in this section with the purchaser.

R152-11-12. Negative Options.

A. A negative option, as defined in 16 C.F.R. 425.1, is a deceptive act or practice only if the negative option violates 16 C.F.R. 425.1.

R152-11-13. Travel Packages.

(1) This rule is authorized by Subsection 13-11-8(2). The purpose of this rule is to define one type of conduct that violates Subsection 13-11-4(1).

(2) It shall be a deceptive act or practice for a supplier to offer, knowingly or intentionally, a reduced rate travel package which:

(a) is tendered to a consumer as an incentive for the performance of some act the consumer has no legal obligation to perform;

(b) is subject to redemption rules the violation of which will result in a default which discharges the supplier's obligation to perform under such rules; and

(c) is structured so that the supplier will only realize a profit if a majority of the consumers who receive reduced rate travel package default.

(3)(a) For a supplier to be held liable under this rule, it is not necessary that he contract directly with a consumer for a reduced rate travel package. It is a sufficient basis for liability for the supplier to offer such a package to any person knowing that a consumer eventually will look to him for performance.

(b) A supplier acts deceptively required by Subsection 13-11-4(2) when he consciously engages in conduct which constitutes a deceptive act or practice, even if he is unaware that such conduct is unlawful.

(4) The definitions appearing in Section 13-11-3 shall apply to this rule, with the following additional definitions:

(a) "reduced rate" means the payment of funds, whether styled as fees, taxes, a discounted payment, or otherwise, which is less than the fair market value of the travel package offered by a supplier; and

(b) "travel package" means air, land, or sea transportation, with or without lodging, for pleasure or business purpose within the scope of the term "consumer transaction".

KEY: advertising, bait and switch, consumer protection, negative options

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	13-11

R156. Commerce, Occupational and Professional Licensing.
R156-38a. Residence Lien Restriction and Lien Recovery Fund Rule.
R156-38a-101. Title.

This rule is known as the "Residence Lien Restriction and Lien Recovery Fund Act Rule."

R156-38a-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to this rule, as used in this rule:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

(3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(4)(a).

(4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(5) "Homeowner" means the owner of an owner-occupied residence.

(6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(4) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(7) "Necessary party" includes the division, on behalf of the fund, and the applicant.

(8) "Owner", as defined in Subsection 38-11-102(17), does not include any person or developer who builds residences that are offered for sale to the public.

(9) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(10) "Qualified services", as used in Subsection 38-11-102(20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

(11) "Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

(a) an offer or agreement conveyed for qualified services that will be performed in the future;

(b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and

(c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

R156-38a-103a. Authority - Purpose - Organization.

(1) This rule is adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of this rule is patterned after the organization of Title 38, Chapter 11.

R156-38a-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or this rule, be in accordance with Section 58-1-106.

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38a-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or this rule.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the

presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the division's records; or

(b) if the lien claimant is not a licensee of the division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to an applicant who submits a complete application if the division determines that the application does not meet the requirements of Section 38-11-204.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:

(a) has made all reasonable efforts to complete the application;

(b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the application if an additional extension is granted.

(3)(a) An applicant may for any reason be granted a single request that its application be prolonged.

(b) An application granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

(c) At the end of the one year period, the applicant shall be required to either complete the application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of an application, the division shall issue to the applicant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the applicant an opportunity to:

(i) reactivate the application by submitting documentation necessary to complete the application;

(ii) withdraw the application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If an applicant's request for renewal of prolonged status is denied, the applicant may request agency review.

(g) An application which has been reactivated from prolonged status may not be again prolonged unless the applicant can establish compliance with the requirements of Subsection (3)(c).

R156-38a-108. Notification of Rights under Title 38, Chapter 11.

A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

R156-38a-109. Format for Form Affidavit and Motion.

The form affidavit required under Subsection 38-1-11(4) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-202a. Initial Assessment Procedures.

The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

R156-38a-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Section 38-11-206.

R156-38a-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if the division

determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b);

(b) sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit;

(c) divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio; and

(d) for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net payment for each claim.

R156-38a-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowner and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the real estate developer had an ownership interest in the property;

(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act who engages in the construction of a residence that is offered for sale to the public:

(i) credible evidence that the contractor real estate developer has an ownership interest in the property;

(ii) a copy of the contract between the homeowner and the contractor real estate developer;

(iii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (5), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

(5) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

R156-38a-204b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(b) the documents required in Section R156-38a-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(2)(a) a copy of the applicant's notice to hold and claim lien recorded against the incident residence pursuant to Section 38-1-7; or

(b) if the applicant did not record notice to hold and claim lien, one of the following as applicable:

(i) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(ii) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(iii) if neither Subsection(2)(b)(i) nor (2)(b)(ii) applies, an affidavit from the homeowner or other credible evidence

establishing the date on which the original contractor substantially completed the written contract;

(3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(8) If the claimant is requesting payment of costs and attorney fees other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the division to apply the requirements set forth in Section R156-38a-204d.

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38a-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of nonpayment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38a-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as

costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.

(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance.

R156-38a-204e. Application of Requirement that Nonpaying Party be Licensed.

The provisions of Subsection 38-11-204(4)(f) shall apply only to qualified services provided by the claimant on or after May 3, 2004.

R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) all unpaid special assessments.

R156-38a-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

R156-38a-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each

registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38a-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

January 7, 2008	**38-11-101**
Notice of Continuation January 7, 2010	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rule.
R156-60c-101. Title.

This rule is known as the "Professional Counselor Licensing Act Rule".

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Internship" means:

(a) 900 clock hours of supervised counseling experience of which 360 hours must be in the provision of mental health therapy:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) from a supervisor licensed as a mental health therapist as defined in Section R156-60c-401.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or four and 1/2 quarter hours duration for academic credit.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

R156-60c-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.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-405(1)(d)(i), the degree and educational program which prepares one to competently engage in mental health therapy is established and clarified to be a masters or doctorate degree in Mental Health Counseling or an equivalent degree from an institution accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or the Council for Higher Education Accreditation of the American Council on Education (CHEA), at the time the applicant obtained the education, which includes a minimum of 60 semester (90 quarter) hours of graduate studies and includes the specific course requirements as specified in Subsection (2).

(2) The core curriculum in Subsection 58-60-405(1)(d) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions of a mental health counselor, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory and shall include several of the predominant theories, which may include humanistic, behavioral or cognitive theories of individual therapy;

(d) a minimum of two semester or three quarter hours shall be in group theory and shall include understanding of group development and multiple theories regarding group therapy;

(e) a minimum of three semester or four and 1/2 quarter hours shall be in human growth and development across the life span, which may include:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(f) a minimum of three semester or four and 1/2 quarter hours shall be in career development;

(g) a minimum of three semester or four and 1/2 quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities; and

(vi) aging;

(h) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization; and

(vii) referral, supportive and follow-up services;

(i) a minimum of two semester or three quarter hours shall be in psychopathology and multi-axial diagnosis DSM classification;

(j) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;

(ii) substance abuse;

(iii) cognitive dysfunction;

(iv) sexual dysfunction; and

(v) abuse and violence;

(k) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory including the theory of test development, variety of test types and introduction to several tests used in mental health assessment;

(l) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status including the assessment of DSM personality diagnosis;

(m) a minimum of three semester or four and 1/2 quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;

(ii) research methods, qualitative and quantitative;

(iii) use and interpretation of research data;

(iv) evaluation of client change; and

(v) program evaluation;

(n) a minimum of three semester or four and 1/2 quarter hours of practicum as defined in Subsection R156-60c-102(2);

(o) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(p) a minimum of 17 semester or 25.5 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) The following degrees do not prepare a person to competently engage in mental health therapy: Career Counseling, College Counseling, Community Counseling, Gerontological Counseling, School Counseling, Student Affairs, Rehabilitation Counseling, Music Therapy, Art Therapy, or

Dance Therapy. Applicants who have one of these degrees or comparable degrees and who complete the classes which have been included in the Mental Health Counseling degree and as outlined in Subsection (1) and (2), may request the Division and the Board to consider their education as equivalent to the requirements for licensure. Upon completion of this substantially equivalent education requirement, the applicant may be granted a license as a certified professional counselor intern under Subsection 58-60-405(2).

(5) An applicant who has met the degree requirements under Subsection (1) or (4) which prepares one to competently engage in mental health therapy, but who is deficient in one or more, but no more than three of the courses provided in Subsection (2), may be granted a temporary professional counselor license as a certified professional counselor extern under Section 58-60-117. Furthermore, the deficient courses may not include ethics, psychopathology, advanced mental status, practicum, or internship.

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(1)(e) and (f) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee, as defined in Subsection R156-60-102(3), of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(2) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (1) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(1)(e) and (f), and Subsections R156-60c-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

R156-60c-302c. Qualifications for Licensure - Examination Requirements.

(1) Under Subsection 58-60-405(1)(g), an applicant for licensure as a professional counselor must pass the following examinations:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination;

(b) the National Counseling Examination of the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

R156-60c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a.

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

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor and certified professional counselor intern.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor or certified professional counselor intern shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of six hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education regarding mental health therapy professional counseling; and

(c) have a method of verification of attendance and completion.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full-time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health

therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.

In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed;

(2) have engaged in lawful practice of mental health therapy as a professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities; and

(3) be employed by or have a contract with the mental health agency that employs the supervisee, but not be employed by the supervisee, nor be employed by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.

R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee is licensed as a certified professional counselor intern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) engaging in physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) using a professional client relationship to exploit a person that is known to have a personal relationship with a

client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failing to cooperate with the Division during an investigation; and

(19) failing to abide by the provisions of the American Counseling Association's Code of Ethics, 2005, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors

August 11, 2009 **58-60-401**

Notice of Continuation January 7, 2010 **58-1-106(1)(a)**
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.

This ruleis known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

(1) "Answer" means a responsive answer to a request.

(2) "Director" means the Director of the Division of Occupational and Professional Licensing.

(3) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(4) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.

(5) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(6) "Notice" means a notice of intent to commence action under Section 78B-3-412.

(7) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.

(8) "Party" means a petitioner or respondent.

(9) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(10) "Petitioner" means any person who files a request with the division.

(11) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(12) "Request" means a request for prelitigation panel review under Section 78B-3-416.

(13) "Respondent" means any health care provider named in a request.

R156-78B-3. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the division.

(2) Deviation from Rule.

The division may permit a deviation from this rule insofar as it may find compliance therewith to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

A party may represent himself individually, or if not an individual, may represent itself through an officer or employee, or may be represented by counsel.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The division shall give the matter a title in substantially the following form:

TABLE I

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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

     John Doe,
        Petitioner                          Request for
                                         Prelitigation Review

     -vs-

     Richard Roe,                     No. PR-XX-XX-XXX
        Respondent
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(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not

have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the division with service thereof to all parties named in the notice. The division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Service. Pleadings and documents issued by the division or panel shall be served either by personal service or by first class mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the division. When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service. There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

```
I hereby certify that I have this day served the
foregoing document upon the parties of record in this
proceeding set forth below (by delivering a copy thereof in
person ) (by mailing a copy thereof, properly addressed by
first class mail):
                    (Name of parties of record)
                              (addresses)

Dated this (day)  day of (month), (year).

(Signature)
(Title)
```

R156-78B-8. Panel Selection and Compensation.

(1) The division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4), whenever multiple respondents are identified in a request, the division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the division whereupon the division may appoint an additional panel member to assist in evaluating damages.

(5) The division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

```
I, (panel member), hereby affirm that, as a member of a
prelitigation panel, I will discharge my responsibilities
without bias towards any party.  I also affirm that, to the
best of my knowledge, no conflict of interest exists as to any
matter which will be entrusted to my consideration as a panel
member.
Dated this (day) day of (month), (year).

(Signature)
```

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the

notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the division, on forms available from the division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the division shall schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the division consent to a shorter period of time.

(e) The division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the division, on forms approved by the division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the division shall establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Procedure.

The division may, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Hearings Closed to the Public.

All hearings are closed to the public.

(2) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(3) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel permits petitioner to present rebuttal evidence.

(4) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(5) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege

recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(6) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(7) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(8) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(9) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(10) Subpoenas and Fees.

(a) Issuance of Subpoenas.

The division may issue subpoenas for the attendance of witnesses and the production of medical records in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Payment of Witness Fees.

A subpoenaed witness who appears for a prelitigation panel review shall be entitled to witness fees and mileage to be paid by the requesting party. Witnesses shall receive the same fee and mileage allowed by law to witnesses in a district court. A witness subpoenaed by a party may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless the fee is tendered, the witness shall not be required to appear.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall file with the division a determination whether any claim against any respondent is meritorious. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall file a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Certificate of Compliance.

Within 15 days after receiving the panel's memorandum opinion, the Director or designee shall issue a certificate of compliance which recites that petitioner has fully complied with the requirements of Section 78B-3-416. With respect to the tolling of the statute of limitations referenced in Section 78B-3-416(3), the 60 day time period mentioned therein shall begin to run as of the date the Director causes the certificate of compliance to be served, the three day mailing period set forth in Section R156-78B-4(3) to be applied.

KEY: medical malpractice, prelitigation
January 21, 2010 78B-3-416(1)(b)
Notice of Continuation April 9, 2007

R162. Commerce, Real Estate.
R162-101. Authority and Definitions.
R162-101-1. Authority.

101.1 The following administrative rules, applicable to the Division of Real Estate, Department of Commerce, have been established under the authority granted by Section 61-2b-6(1).

101.2 The authority to establish and collect fees is granted by Section 61-2b-37.

101.3 The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2b-8(5)(c) within certain limitations as imposed by Section 61-2b-27(1)(c).

R162-101-2. Definitions.

101.2.1 AQB: the Appraiser Qualifications Board of The Appraisal Foundation.

101.2.2 Board: the Utah Real Estate Appraiser Licensing and Certification Board.

101.2.3 Classification: the type of license or certification held by an appraiser.

101.2.4 Division: the Division of Real Estate of the Department of Commerce.

101.2.5 Reinstatement: renewing a license or certification for an additional period after its expiration date has passed but prior to 12 months after the expiration date.

101.2.6 Renewal: extending a license or certification for an additional period upon its expiration.

101.2.7 Trainee: a person who is working under the direct supervision of a State-certified residential appraiser or a State-certified general appraiser to earn hours for licensure, and who meets the requirements of R162-110.

101.2.8 USPAP: The Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation.

KEY: real estate appraisals, definitions
January 27, 2010 61-2b-20 to 61-2b-31
Notice of Continuation April 18, 2007

R162. Commerce, Real Estate.
R162-102. Application Procedures.
R162-102-1. Application.

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the State of Utah. Until January 1, 2008, an applicant may submit education documentation and experience documentation to the Division for approval separately. Effective January 1, 2008, an applicant shall submit education documentation and experience documentation to the Division at the same time.

102.1.1.1 Education documentation may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.1.1 As a prerequisite to sitting for either the licensing examination or the certification examination, the applicant shall submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.1.2 The applicant shall provide evidence of meeting the experience requirement by completing the form required by the Division. The Division and the Board shall not award experience credit toward qualification as a state-licensed appraiser for any work performed at a time when the applicant was not registered with the Division as a trainee.

102.1.1.3 The candidate shall submit the appropriate license or certification fee at the time of application.

102.1.1.4 If an applicant has submitted education or experience documentation to the Division prior to January 1, 2008 and has obtained approval of only the education component or only the experience component required for licensure or certification, the applicant must submit proper documentation of the remaining component to the Division prior to January 1, 2011 or any approval of a component shall lapse.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance.

102.1.2.2 The candidate shall make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

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

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

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

102.1.3.1.3 The fee for the federal registry if the applicant is applying for certification.

R162-102-2. Status Change.

102.2.1 A licensed appraiser, certified appraiser, or trainee shall notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice shall be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.

102.2.2.1 Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the licensed appraiser, certified appraiser, or trainee at the mailing address shown on the Division records. The applicant for renewal shall return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed appraiser, certified appraiser, or trainee shall return proof of completion of the following continuing education taken during the preceding two years:

(a) the 7-hour National USPAP Update Course; and

(b) 21 additional hours of Division-approved continuing education.

102.3.1.1.4 All appraisers and trainees must take the 7-hour National USPAP Update Course or its equivalent once for each renewal in order to maintain a license, certification, or registration. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license, certification, or registration shall expire.

102.3.2.1 A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 Reinstatement.

(a) After the 30-day period described in Subsection 102.3.2.1 and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by

(i) complying with Subsection 102.3.1;

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in Subsection (a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by

(i) complying with Subsection 102.3.1;

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date must:

(A) reapply with the Division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under Subsection (i) shall receive credit for previously credited prelicensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and it was either

(B) completed after January 1, 2008; or

(C) certified by the Division and the AQB prior to January 1, 2008, as approved, qualified prelicensing education.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser or trainee who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's or trainee's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser or trainee shall have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-4. Six-Month Temporary Permits.

102.4.1 A non-resident of this state may obtain a six-month temporary permit to perform one or more specific appraisal assignments in Utah. In order to qualify for a temporary permit, the specific appraisal assignments must be covered by a contract to provide appraisals. In order to obtain a temporary permit, an applicant must:

102.4.1.1 Submit an application in writing requesting temporary licensure or certification. The application shall include the name of the client, the specific property address(es) to be appraised, the type of property being appraised, and the estimated time to complete the assignment;

102.4.1.2 Answer and submit a "Utah Appraiser Qualifying Questionnaire" in the form designated by the Division;

102.4.1.3 Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.4.1.4 Pay an application fee in the amount established by the Division; and

102.4.1.5 Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

102.4.2 A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six month period if the assignments have not been completed within the original six-month term of the temporary permit. A temporary permit may be extended by submitting any forms required by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant shall obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and shall sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant shall provide evidence of having passed an examination that has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant shall provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant shall agree, as a condition of licensure or certification, to furnish to the Division upon demand all records requested by the Division relating to the applicant's appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing
January 27, 2010 **61-2b-6(1)**
Notice of Continuation February 15, 2007

R162. Commerce, Real Estate.
R162-104. Experience Requirement.
R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104-14, appraisal experience shall be measured in hours according to the Appraisal Experience Hours Schedules in Section R162-104-15 of this rule.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants shall submit proof of experience as follows:

(a) State-licensed appraiser: at least 2,000 hours of appraisal experience.

(b) Certified residential appraiser: 500 hours accrued after state-licensed status was obtained, for a minimum of 2,500 hours of appraisal experience.

(c) Certified general appraiser: 1,000 hours accrued after state-licensed status was obtained, for a minimum of 3,000 hours of appraisal experience.

R162-104-2. Maximum Hours Per Year.

104.2 An applicant may not accrue more than 2,000 experience hours in any 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to substantiate the experience claimed using the form required by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements; Local Experience Requirement.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional hours for certification required by Subsection R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 Except for experience hours claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property. Not more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

104.5.4 At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

R162-104-6. State-Licensed and State-Certified Applicants.

104.6.1 Except for those applicants who qualify under Section R162-104-14, applicants applying for licensure as State-Licensed Appraisers shall be awarded hours from the Hours Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with Subection R162-105-3.

104.6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the hours submitted from the Residential Experience Hours Schedule or the residential portion of the Mass Appraisal Hours Schedule. No more than 25% of the total hours submitted may be from the General Experience Hours Schedule or from assignments listed on the Mass Appraisal Hours Schedule other than 1 to 4 unit residential properties.

104.6.3 Applicants applying for certification as State-Certified General Appraisers may claim hours for experience from any of the Hours Schedules in Section R162-104-15, so long as at least 50% of the total hours has been earned from the General Experience Hours Schedule or from assignments listed on the Mass Appraisal Hours Schedule other than 1 to 4 unit residential properties.

R162-104-7. Review or Supervision of Appraisals.

104.7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following hours shall be awarded for review or supervision of appraisals:

104.7.1 Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 500 hours may be earned by desk review of appraisals.

104.7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 500 hours may be earned by field review of appraisals.

104.7.3 Supervision of appraisers shall be worth 20% of the hours awarded to the appraisal. A maximum of 500 hours may be earned by supervision of appraisers.

104.7.4 Except as provided in Subsection R162-104.7.5, not more than 50% of the total experience required for certification may be granted under Subsections R162-104.7.1 through R162-104.7.3 and R162-104.9.1 and R162-104.9.3 combined.

104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the hour limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.

R162-104-8. Condemnation Appraisals.

104.8 Condemnation appraisals shall be worth an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-9. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.9.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance

with Section R162-104-14, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.9.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with Section R162-104-14, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.9.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with Section R162-104-14 for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104.9.1 and R162-104.9.3 and R162-104.7.1 through R162-104.7.3 combined.

R162-104-10. Experience Participation.

104.10 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards, and preparation and development of the appraisal report in order to count the appraisal for experience credit. With the exception of experience claimed under Subsection R162-104.15.3, experience credit will be granted to only one licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-11. Unacceptable Experience.

104.11 An applicant will not receive hours toward satisfying the experience requirement for licensure or certification for performing the following:

(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(b) Personal property appraisals.

R162-104-12. Verification of Experience.

104.12 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-13. Experience Review Committee.

104.13 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.13.1 The Committee shall:

104.13.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.13.1.2 Correspond with applicants concerning submissions, if necessary; and

104.13.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.13.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and mass appraisers.

104.13.2.1 The chairperson of the committee shall be appointed by the Board.

104.13.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.13.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-14. Special Circumstances.

104.14 Applicants having experience in categories other than those shown on the Appraisal Experience Hours Schedules and applicants who believe the Experience Hours Schedules do not adequately reflect their experience or the complexity or time spent on an appraisal may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of hours for the alternate experience.

104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the scope of authority limitations in Subsection R162-105.3.

R162-104-15. Appraisal Experience Hours Schedules.

104.15.1 Residential Experience Hours Schedule. The following hours shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site	5 hours
(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site	7.5 hours
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
(1) 1-25 dwellings	5 hours per dwelling up to a maximum of 30 hours
(2) Over 25 dwellings	A total of 50 hours
(c) Two to four-unit dwelling	20 hours
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	10 hours
(e) Residential lot, 1-4 unit	5 hours
(f) Multiple lots in the same subdivision which are substantially similar	
(1) 1-25 lots	5 hours per lot up to a maximum of 30 hours
(2) Over 25 lots	A total of 50 hours
(g) Small parcel up to 5 acres	5 hours
(h) Vacant land, 20-500 acres	20-40 hours, as determined by the Board
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	10 hours
Over 10 acres	15 hours
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	5-35 hours as determined by the Board
(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

104.15.1.1 Government Agency Experience. Applicants

whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:

104.15.1.1.1 Applicants for State-Licensed Appraiser: five.

104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.

104.15.1.2 A maximum of 250 experience hours may be earned from appraisal of vacant land.

104.15.2 General Experience Hours Schedule. All appraisal reports claimed in the following areas must be narrative appraisal reports unless specified otherwise. Experience hours listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the Appraiser Experience Log submitted by the applicant and maintains in the workfile for the appraisal an explanation about why the extra hours are claimed.

TABLE 2

(a) Apartment buildings, 5-100 units	40 hours
Over 100 units	50 hours
(b) Hotel or motels, 50 units or fewer	30 hours
51-150 units	40 hours
Over 150 units	50 hours
(c) Nursing home, rest home, care facilities,	
Fewer than 80 beds	40 hours
Over 80 beds	50 hours
(d) Industrial or warehouse building,	
Fewer than 20,000 square feet	30 hours
Over 20,000 square feet, single tenant	40 hours
Over 20,000 square feet, multiple tenants	50 hours
(e) Office buildings	
Fewer than 10,000 square feet	30 hours
Over 10,000 square feet, single tenant	40 hours
Over 10,000 square feet, multiple tenants	50 hours
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	30 hours
31- or more-unit project	50 hours
(g) Retail buildings	
Fewer than 10,000 square feet	30 hours
More than 10,000 square feet, single tenant	40 hours
More than 10,000 square feet, multiple tenants	50 hours
(h) Commercial, multi-unit, industrial, or other nonresidential use acreage	
1 to 99 acres	20-40 hours
100 acres or more, income approach to value	50-60 hours
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours as determined by Board
(j) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	30 hours
Over 25-unit subdivision or PUD	50 hours
(k) Feasibility or market analysis, maximum 500 hours	5 to 100 hours as determined by Board

Farm and Ranch appraisals	Form	Narrative
(l) Separate grazing privileges or permits	20 hrs.	25 hrs.
(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	10 hrs.	15 hrs.
11-50 acres	12.5 hrs.	20 hrs.
51-200 acres	15 hrs.	25 hrs.
201-1000 acres	25 hrs.	40 hrs.
More than 1000 acres	40 hrs.	50 hrs.
(n) Dry farm, 1 to 1000 acres	15 hrs.	25 hrs.
More than 1000 acres	20 hrs.	40 hrs.
(o) Improvements on properties other than a rural residence, maximum 10 hours:		
Dwelling	5 hrs.	5 hrs.
Sheds	2.5 hrs.	2.5 hrs.
(p) Cattle ranches		
0-200 head	15 hrs.	20 hrs.
201-500 head	25 hrs.	30 hrs.
501-1000 head	30 hrs.	40 hrs.
More than 1000 head	40 hrs.	50 hrs.
(q) Sheep ranches		
0-2000 head	25 hrs.	30 hrs.
More than 2000 head	35 hrs.	45 hrs.
(r) Dairies, includes all improvements except a dwelling		
1-100 head	20 hrs.	25 hrs.
101-300 head	25 hrs.	30 hrs.
More than 300 head	30 hrs.	35 hrs.
(s) Orchards		
5-50 acres	30 hrs.	40 hrs.
More than 50 acres	40 hrs.	50 hrs.
(t) Rangeland/timber		
0-640 acres	20 hrs.	25 hrs.
More than 640 acres	30 hrs.	35 hrs.
(u) Poultry		
0-100,000 birds	30 hrs.	40 hrs.
More than 100,000 birds	40 hrs.	50 hrs.
(v) Mink		
0-5000 cages	30 hrs.	35 hrs.
More than 5000 cages	40 hrs.	50 hrs.
(w) Fish farms	40 hrs.	50 hrs.
(x) Hog farms	40 hrs.	50 hrs.
(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	20-100 hours	

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit form reports shall be worth 75% of the hours normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience Hours Schedule.

TABLE 3

(a) One-unit dwelling, above-grade living area less than 4,000 square feet	
(1) Exterior inspection, highest and best use analysis, data collection only	.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1 hour
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 hours
(b) One-unit dwelling, above-grade living area 4,000 square feet or more	
(1) Exterior inspection, highest and best use analysis, data collection only	.75 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1.5 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	5 hours
(c) Two to four unit dwelling	
(1) Exterior inspection, highest and best use analysis, data collection only	1.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	3 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	15 hours
(d) Commercial and industrial buildings, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	2 to 10 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3 to 37.5 hours
(e) Agricultural and other improvements, depending on complexity	
(1) Exterior inspection, highest and	

best use analysis, data collection only	.5 to 2.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 to 20 hours
(f) Vacant land, depending on complexity	
(1) Inspection, highest and best use analysis, data collection only	.5 to 2.5 hours
(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	2.5 to 25 hours
(3) Land segregation (division) analysis and processing, no field inspection	.25 hours
(4)Land segregation (division) analysis and processing, field inspection	.5 hours
(g) Data input and review for experience hours claimed under Subsections R162-104-15.3(a) through (f)	.25 hours
(h) Land valuation guideline	
(1) 25 or fewer parcels	10 hours
(2) 26 to 500 parcels	30 hours
(3) Over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours
(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation	
(1) Base study of 100 reviewed sales	125 hours
(2) Additional increments of 100 sales	Add 25 hours for each 100 additional sales, up to a maximum of 375 hours
(j) Multiple Regression Model, Development and Implementation	
(1) Less than 5,000 parcels	100 hours
(2) Additional increments of 500 parcels	Add 5 hours for each additional 500 parcels, up to a maximum of 375 hours
(k) Depreciation study and analysis	100 hours
(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505	
(1)Office review only	.25 hours
(2) Field review	.5 hours
(m) Natural Resource Properties, depending on complexity	
(1) Sand and Gravel, per site	7.5 to 20 hours
(2) Mine	7.5 to 110 hours
(3) Oil and Gas, per site	1.65 to 50 hours
(n) Pipelines and gas distribution properties, depending on complexity	10 to 40 hours
(o) Telephone and electrics properties, depending on complexity	5 to 80 hours
(p) Airline and railroad properties, depending on complexity	10 to 80 hours
(q) Appraisal review/audit, depending on complexity	2.5 to 125 hours
(r) Capitalization rate study	80 hours

104.15.3.1 Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of hours shown in Tables 1 and 2.

104.15.3.2 Review and supervision of appraisals by mass appraisers will receive hours in accordance with Subsection R162-104.7.

104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.

104.15.3.4 Applicants for State-Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.3.5 No more than 60% of the total hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.

104.15.3.6 No more than 25% of the total hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.

104.15.3.7 No more than 20% of the total hours submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).

104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience hours.

KEY: real estate appraisals, experience
January 27, 2010 61-2b-1 through 61-2b-40
Notice of Continuation February 15, 2007

R162. Commerce, Real Estate.
R162-105. Scope of Authority.
R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than $1,000,000 and complex one to four residential units having a transaction value of less than $250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Certified Appraiser to earn hours for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 110 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 110 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.4 Supervising Appraisers. A trainee may have more than one state-certified supervising appraiser. A supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, shall be accompanied by a supervising State-Certified Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, shall be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Hours for Licensure. A trainee may accumulate experience hours for each duty listed below with the respective percentages, not to exceed the maximum number of hours awarded by the Appraisal Experience Hour Schedule under Sections 104-15.1, 104-15.2, and 104.15.3. No more than one-third of the experience hours submitted toward licensure may come from any one of the following categories:

(a) participation in highest and best use analysis - 10% of total hours;

(b) participation in neighborhood description and analysis - 10% of total hours;

(c) as provided in Sections 105.3.5 and 105.3.6, inspecting the interior and exterior, including measurement of the exterior of a property that is the subject of an appraisal and inspection of the exterior of a property that may be used as a comparable in an appraisal. No hours will be granted for inspections that do not include both an interior and exterior inspection of the subject property - 20% of total hours;

(d) participation in land value estimate - 20% of total hours;

(e) participation in sales comparison property selection and analysis - 30% of total hours;

(f) participation in cost analysis - 20% of total hours;

(g) participation in income analysis - 30% of total hours;

(h) participation in the final reconciliation of value - 10% of total hours;

(i) participation in report preparation - 20% of total hours.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser shall actively supervise those inspections and the resulting appraisals. In addition, the supervising appraiser shall personally inspect all property when the appraisal report scope of work or certification requires appraiser inspection.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall

contain, at a minimum, the following information for each appraisal.

(a) file number;
(b) report date;
(c) subject address;
(d) client name;
(e) type of property;
(f) report form number or type; and
(g) number of work hours.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.

KEY: real estate appraisals
January 27, 2010 **61-2b-6(1)(l)**
Notice of Continuation November 10, 2008

R162. Commerce, Real Estate.
R162-110. Trainee Registration.
R162-110-1. Trainee Registration.

(1) Registration Required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser must first register with the Division as a trainee.

(b) The Division and the Board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not validly and currently registered as a trainee.

(2) Character. An individual registering with the Division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for

(i) Any felony that resulted in

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application.

(ii) Any misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time prior to the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of appraising;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and

(ix) failure to pay taxes or child support obligations.

(3) Competency. An individual registering with the Division as a trainee shall evidence competency. In evaluating an applicant for competency, the Division and Commission may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraising;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4) Pre-registration Education. Within the five-year period preceding the date of application, an applicant must successfully complete 75 classroom hours of AQB-approved education as follows:

(a) 30 hours of appraisal principles;

(b) 30 hours of appraisal procedures; and

(c) the 15-hour Uniform Standards of Professional Appraisal Practice (USPAP) course.

(5) Examination. An applicant must pass the final examination in all pre-registration courses.

(6) Application to the Division. An applicant shall submit the following to the Division:

(a) a completed application as provided by the Division;

(b) course completion certificates for the 75 hours of pre-registration education;

(c)(i) two fingerprint cards in a form acceptable to the Division; or

(ii) evidence that the applicant's fingerprints have been scanned at a testing center;

(d) all court documents related to any past criminal proceeding;

(e) complete documentation of any sanction taken against any license in any jurisdiction;

(f) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;

(g) the fee for the criminal background check; and

(h) the application fee.

(7) Affiliation with a Certified Appraiser. Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by

(a) identifying each supervising certified appraiser on a form supplied by the Division; and

(b) obtaining each supervising certified appraiser's signature on the application.

(8) Notification Requirements. A registered trainee must notify the Division within 10 working days whenever the trainee

(a) affiliates with a new supervising certified appraiser; or

(b) terminates an affiliation with a supervising certified appraiser.

(9) Re-registration of Existing Trainees.

(a) Any trainee who registered with the Division without undergoing a background check shall re-register with the Division according to the following schedule:

(i) a trainee who registered prior to January 1, 2008 must re-register by January 1, 2011;

(ii) a trainee who registered during the 2008 calendar year must re-register in 2011 by the anniversary of the trainee's registration date;

(iii) a trainee who registered on or after January 1, 2009 must re-register on the two-year anniversary of the registration date.

(b) To re-register, a trainee shall submit the following to the Division:

(i) a completed application as provided by the Division;

(ii)(A) two fingerprint cards in a form acceptable to the Division; or

(B) evidence that the applicant's fingerprints have been scanned at a testing center;

(iii) all court documents related to any past criminal proceeding;

(iv) complete documentation of any sanction taken against any license in any jurisdiction;

(v) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;

(vi) the fee for the criminal background check;

(vii) evidence of having completed the 28 hours of continuing education or AQB qualifying education required for renewal under Subsection 162-102-3; and

(viii) the application fee.

(d) A Division hearing officer shall review the application

of any trainee re-registering under Subsection (9) who fails to meet the character and competency requirements of Subsections (2) and (3). The hearing officer may

(i) approve the application with the concurrence of the Board;

(ii) approve the application subject to probation or restriction; or

(iii) refer the application to the Board for decision.

(10) Registration Renewal.

(a) A trainee registration is valid for two years and must be renewed according to Subsection R162-102-3 before the expiration date printed on the registration certificate.

(b) If the renewal fee and required documentation are not received by the expiration date, the registration shall expire. It shall be grounds for disciplinary sanction if, after the registration has expired, the trainee continues to perform work for which the trainee is required to be registered.

(c) An expired registration may be renewed or reinstated according to the same rules that govern the renewal and reinstatement of appraiser licenses and certifications, as outlined in Subsections R162-102.3.2 through R162-102.3.4.

KEY: real estate appraisals, trainees, registration
January 7, 2010 **61-2b-6(4)**
61-2b-8(2)(d)

R164. Commerce, Securities.
R164-4. Licensing Requirements.
R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "NASD" means the National Association of Securities Dealers.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of the NASD and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the CRD the license fee specified in the Divisions fee schedule before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or NASD Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(5) "IARD" means the Investment Adviser Registration Depository.

(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "NASD" means the National Association of Securities Dealers.

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) Part II of SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(1)(c)(ii) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) NASD Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following to the IARD before December 31:

(2)(a) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

(2)(b) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official);

(2)(c) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

(2)(d) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of $500 per client, or if the investment adviser has custody or possession of clients' funds or securities; and

(2)(e) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part II of Form ADV during the last calendar year of the licensing period.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed NASD Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's NASD Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances

would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by the NASD.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "IARD" means the Investment Adviser Registration Depository operated by the NASD.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "NASD" means the National Association of Securities Dealers.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded

by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform

Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than $100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of $25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least $25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as in investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

(E) Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer,

investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

R164-4-9. Exemptions From Licensing Requirements for Certain Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than $10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain

Institutional Investors

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements

January 6, 2010 **61-1-3**
Notice of Continuation July 30, 2007 **61-1-4**
61-1-5
61-1-6
61-1-13
61-1-14
61-1-24

R207. Community and Culture, Arts and Museums.
R207-3. Capital Funds Request Prioritization.
R207-3-1. Purpose.

The purpose of this rule is to establish the procedure regarding annual capital grant request prioritization by the Utah Arts Council Board of Directors and the Office of Museum Services Advisory Board in the Division of Arts and Museums within the Department of Community and Culture.

R207-3-2. Authority.

The division may make, amend, or repeal rules for the conduct of its business in governing the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R207-3-3. Application Submission and Review.

The Board of the Utah Arts Council and the Advisory Board of the Office of Museum Services shall accept applications for capital facilities grant prioritization through June 1 of each year.

All applications must be submitted electronically via the Department of Community and Culture (DCC) and its division web portals. Before July 1, Division staff will be allowed to re-direct applications if it is determined the applicant would be better served in another DCC board reviewed the request. Applicants will be notified within five working days by the division if the division redirects the application to another division. Incomplete applications will not be considered by the board. By definition, capital facilities grants shall include new construction, preservation, restoration, and renovation.

Prioritization will be based on the following criteria:

(1) Goals of application
(2) Public benefit of project
(3) Strategic value of partnerships

The Board shall submit its final prioritized list to DCC Administration at least three working days prior to September 30 of each year. Each board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of the total grant amount requested and the basis for prioritization of requested grants on the list.

DCC Administration will submit the Board's prioritized lists to the DCC-assigned budget analyst in the Governor's Office of Planning and Budget and the DCC-assigned analyst in the Legislative Fiscal Analyst's Office by September 30 of each year. The Governor's Office of Planning and Budget will forward the prioritized lists to the Governor. The Legislative Fiscal Analyst's Office will forward the prioritized lists to the appropriate members of the Legislature's Appropriations Subcommittee and leadership.

KEY: grant applications, grants, capital facilities, grant prioritizations
January 27, 2010 **9-6-205**
9-6-605

R223. Community and Culture, Library.
R223-3. Capital Funds Request Prioritization.
R223-3-1. Purpose.

The purpose of this rule is to establish the procedure regarding annual capital grant request prioritization by the State Library in the Division of Utah State Library within the Department of Community and Culture.

R223-3-2. Authority.

The division may make, amend, or repeal rules for the conduct of its business in governing the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R223-3-3. Application Submission and Review.

(1) The Board of the State Library shall accept applications for capital facilities grant prioritization through June 1 of each year.

(2) All applications must be submitted electronically via the Department of Community and Culture (DCC) and its division web portals. Before July 1, Division staff will be allowed to re-direct applications if it is determined the applicant would be better served if another DCC board reviewed the request. Applicants will be notified within five working days by the division if the division redirects the application to another division. Incomplete applications will not be considered by the board. By definition, capital facilities grants shall include new construction, preservation, restoration, and renovation.

(3) Prioritization will be based on the following criteria:

(a) Goals of application

(b) Public benefit of project

(c) Strategic value of partnerships

(4) The Board shall submit its final prioritized list to DCC Administration at least three working days prior to September 30 of each year. Each board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of the total grant amount requested and the basis for prioritization of requested grants on the list.

(5) DCC Administration will submit the Board's prioritized lists to the DCC-assigned budget analyst in the Governor's Office of Planning and Budget and the DCC-assigned analyst in the Legislative Fiscal Analyst's Office by September 30 of each year. The Governor's Office of Planning and Budget will forward the prioritized lists to the Governor. The Legislative Fiscal Analyst's Office will forward the prioritized lists to the appropriate members of the Legislature's Appropriations Subcommittee and leadership.

KEY: grant applications, grants, capital facilities, grant prioritizations
January 27, 2010 9-7-205

R277. Education, Administration.
R277-111. Sharing of Curriculum Materials by Public School Educators.
R277-111-1. Definitions.

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

B. "Creative Commons License" means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright applicable law. Creative Commons Licenses are non-exclusive and non-revocable.

C. "District/LEA materials" means materials purchased or developed by a school district/charter school using district funds or resources, including materials, resources or activities which the district requested employees to create, develop or compile during the employees' contract time.

D. "Material(s)" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.

E. "Non-commercial use" means use or exchange without payment or compensation of any kind.

F. "Personally developed materials" means materials developed by an educator. These materials may be developed on the educator's contract time using school resources, on the educator's personal time using personal resources, as an individual employment assignment, or in conjunction with other colleagues.

G. "Teacher curriculum materials" means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.

R277-111-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to encourage school productivity and cost effectiveness measures.

B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.

R277-111-3. Educators Sharing Materials.

A. Utah educators may share materials for noncommercial use that educators have developed primarily for use in their own classes, courses or assignments.

B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.

C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.

D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.

E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally-developed materials. However public school employers may provide notice to employees that materials developed with public school funds or during public school employment must be reviewed by the employer prior to sharing or distribution.

F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds or developed within the employee's scope of employment to Utah educators.

R277-111-4. School District/Charter School Rights.

A. Utah school districts or charter schools may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time, developed partially or jointly with school district/charter school funding, as part of a district/charter school assignment or if materials reference or imply school district/charter school use or endorsement.

B. Utah school districts/charter schools may prohibit their employees from sharing materials that were purchased with school district funds or which are licensed specifically for school district/charter school use.

KEY: curriculum materials, sharing
January 8, 2010 **Art X Sec 3**
53A-1-401(3)
53A-1-402(1)(e)

R277. Education, Administration.
R277-613. School District and Charter School Bullying and Hazing Policies and Training.
R277-613-1. Definitions.

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

B(1) "Bullying" means intentionally or knowingly committing an act that is done for the purpose of placing a school employee or student in fear of:

(a) physical harm to the school employee or student; or

(b) harm to property of the school employee or student.

(2) Acts of bullying may include:

(a) endangerment to the physical health or safety of a school employee or student;

(b) any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements to a school employee or student;

(c) forced or unwilling consumption of any food, liquor, drug, or other substance by a school employee or student;

(d) any forced or coerced act or activity of a sexual nature or with sexual connotations such as asking a student to remove articles of clothing or expose or touch private areas of the body;

(e) other physical activity that endangers the physical health and safety of a school employee or student; or

(f) physically obstructing a school employee's or student's freedom to move.

(3) The conduct described in R277-613-1B(2) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

C. Cyberbullying" means the use of e-mail, instant messaging, chat rooms, pagers, cell phones, or other forms of information technology to deliberately harass, threaten, or intimidate someone for the purpose of placing a school employee or student in fear of:

(1) physical harm to the school employee or student; or

(2) harm to property of the school employee or student.

D. "Hazing" means intentionally or knowingly committing an act that is:

(1) done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event.

(2) Acts of hazing may include:

(a) endangerment to the physical health or safety of a school employee or student;

(b) any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements to a school employee or student;

(c) forced or unwilling consumption of any food, liquor, drug, or other substance by a school employee or student;

(d) any forced or coerced act or activity of a sexual nature or with sexual connotations such as asking a student to remove articles of clothing or expose or touch private areas of the body;

(e) other physical activity that endangers the physical health and safety of a school employee or student; or

(f) physically obstructing a school employee's or student's freedom to move.

(3) The conduct described in R277-613-1D(2) constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

E. "Policy" means a set of standards and procedures that includes the provisions of Section 53A-11-301(3) and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that define hazing and bullying, prohibit hazing and bullying, require annual discussion and training designed to prevent hazing and bullying among school employees and students and provide for enforcement through employment action or student discipline.

R277-613-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and the responsibility of the Board to provide assistance with and ensure school district/charter school compliance with Section 53A-11a-301.

B. The purpose of the rule is to require school districts and charter schools to implement bullying and hazing policies district and school wide, to provide for regular and meaningful training of school employees and students and to provide for enforcement of the policies in schools, at the state level and in public school athletic programs.

R277-613-3. Utah State Board of Education Responsibilities.

A. To the extent of resources available, the Board shall provide training opportunities or materials or both for employees of school districts and charter schools on bullying and hazing.

B. The Board may interrupt disbursements of funds consistent with Section 53A-1-401(3) for failure of a school district or charter school to comply with this rule.

R277-613-4. Local School District and Charter School Responsibilities.

A. Each school district and charter school shall implement a policy prohibiting bullying and hazing consistent with Section 53A-11a-301.

B. Each school district and charter school shall, no later than December 1, 2009:

(1) post a copy of its policy on the school district/charter school website; and

(2) provide a copy of the school district/charter school policy or uniform resource locator (URL) to the State Superintendent of Public Instruction at the Utah State Office of Education.

C. Each school district and charter school shall post a copy of its policy on district or school website no later than November 1, 2009.

D. Policies shall provide for training to students, staff, and volunteers consistent with the following:

(1) 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;

(2) 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;

(3) training specific to prohibitions against bullying or hazing of a sexual nature or with sexual overtones;

(4) 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;

E. Policies shall also:

(1) complement existing safe and drug free school policies and school harassment and hazing policies; and

(2) 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.

F. The policy shall also provide direction to employees about bullying and dealing with disruptive students. This part of the policy 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;

(3) designate to whom notices shall be provided;

(4) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;

(5) include strategies to provide for necessary adult supervision;

(6) be clearly written and consistently enforced;

(7) 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; and

(8) provide notice to employees that violation(s) of this rule may result in employment discipline or action.

R277-613-5. Training by School Districts and Charter Schools Specific to Participants in Public School Athletic Programs and School Clubs.

A. Prior to any student or employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, a student or coach shall participate in bullying and hazing prevention training.

B. School districts and charter schools may collaborate with the Utah High School Activities Association to develop and provide training.

C. Student athletes and extracurricular club members shall be informed of prohibited activities under this rule and notified of potential consequences for violation of the law or the rule or both.

D. School districts and charter schools that offer athletics shall provide annual training to all new students and new employees and require refresher training for all students and employees at least once every three years.

E. Training curriculum outlines, training schedules, and participant lists or signatures shall be maintained by each school or school district and provided to the Utah State Office of Education upon request.

R277-613-6. Professional Responsibilities of Employee and Volunteer Coaches.

A. All public school coaches shall act consistent with professional standards of R277-515 in all responsibilities and activities of their assignments.

B. Failure to act consistently with R277-515 toward students, colleagues and parents may result in discipline against an educator's license.

KEY: bullying, hazing, policies, training
December 8, 2009 **Art X Sec 3**
53A-1-401(3)
53A-11a-301

R277. Education, Administration.
R277-711. Educational Programs for Gifted and Talented Students.
R277-711-1. Definitions.

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

B. "Gifted and talented students" means children and youth whose superior performance or potential for accomplishment requires a differentiated and challenging education program to meet their needs in any one or more of the following areas:

(1) general intellectual: students who demonstrate a high aptitude for abstract reasoning and conceptualization, who master skills and concepts quickly, and who are exceptionally alert and observant;

(2) specific academic: students who evidence extraordinary learning ability in one or more specific disciplines;

(3) visual and performing arts: students who are consistently superior in the development of a product or performance in any of the visual and performing arts;

(4) leadership: students who emerge as leaders, and who demonstrate high ability to accomplish group goals by working with and through others;

(5) creative, critical or productive thinking: students who are highly insightful, imaginative, and innovative, and who consistently assimilate and synthesize seemingly unrelated information to create new and novel solutions for conventional tasks.

C. "Accelerated" means enabling students to move through academic programs based on their performance level.

D. "Enrichment" means classes or programs that provide greater depth and breadth of experiences and information than students would receive in traditional classes.

E. "Accelerated learning programs" means programs for: gifted and talented students, concurrent enrollment students, and students enrolled in the College Board Advanced Placement Program.

F. "Programs for gifted and talented students" means differentiated and challenging educational programs designed to meet the needs of gifted and talented students in one or more areas identified in Section 1(B).

R277-711-2. 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-17a-120 which directs the Board to adopt rules for the expenditure of funds appropriated for accelerated learning programs, Section 53A-1-402(1) which authorizes the Board to adopt rules for special programs and Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for using a portion of accelerated learning program funds to develop programs and services for gifted and talented students.

R277-711-3. Program Standards.

A. Appropriately qualified people shall direct and implement the district's program(s) for gifted and talented students.

B. Each district shall have a process for identifying students in one or more of the areas listed in Section 1(B) based upon at least three assessment instruments. These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse, handicapped and underachieving students.

C. Each school district shall have a process for appropriately placing students identified as gifted and talented.

D. Each school district shall develop and submit, to the Utah State Office of Education for review annually, a plan for educating gifted and talented students. This plan shall reflect a time frame appropriate to the district. The district plan shall contain provisions to:

(1) develop a written philosophy for the education of gifted and talented students that is consistent with the goals and values of the school district and the community;

(2) select a district coordinator who is responsible for the program;

(3) recognize a variety of areas in which a student may be identified as gifted;

(4) provide carefully integrated, and articulated curricula throughout the district;

(5) identify and use teaching strategies that are appropriate to the learning styles and emotional needs of gifted and talented students;

(6) adopt flexible pacing at all levels and allow students to advance as they master content and skills;

(7) offer program options that reach through and beyond the normal institutional boundaries: across disciplines, across grade levels, and across levels of intelligence;

(8) provide guidance to assist students in addressing personal and interpersonal needs, in program selection and in career and college choices;

(9) balance acceleration with enrichment activities for diverse types and degrees of intelligence;

(10) provide information regarding special services, programs, and other appropriate educational opportunities; and

(11) utilize appropriate community and private resources.

E. Provisions shall be made in the district plan for staff development and support.

F. Each district shall evaluate its program to assure accountability, assess the success of individual program elements, and determine student growth and achievement.

R277-711-4. Fiscal Standards.

A. Each school district shall receive its share of funds in the proportion that the district's number of weighted pupil units for kindergarten through grade twelve and necessarily existent small schools bears to the state total.

B. Funds shall be used in any of the following areas:

(1) planning, program development, and identification of students;

(2) salaries, in-service education costs, and the costs of conferences, workshops, and other educational activities designed to enable teachers to better serve gifted and talented students;

(3) supplies, materials, and equipment to supplement and enhance the education programs for gifted and talented students.

C. Funds allocated for programs for gifted and talented students shall not be used for Concurrent Enrollment programs.

D. The Utah State Office of Education shall have fiscal and pupil accounting procedures to assess programs for gifted and talented students.

KEY: gifted children, accelerated learning*
1990 **53A-1-402(1)**
Notice of Continuation November 23, 2005 **53A-1-401(3)**
53A-17a-120

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. Definitions.

A. "Accessible media producer" means companies or agencies that create fully-accessible specialized, student-ready formats for curriculum materials, such as Braille, large print, audio, or digital books.

B. "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind with members, responsibilities, and other provisions under Section 53A-25b-203 and R277-800-4.

C. "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing. These assessments may include the following areas of focus:

(1) valid, reliable and appropriate assessments given to determine eligibility for placement and services by a team of qualified professionals and the student's parent(s);

(2) functional assessments accomplished by observation and measurement of daily living skills and functional use of vision or hearing;

(3) academic evaluations as part of the Utah Performance Assessment System for Student (U-PASS), criterion reference tests (CRTs), or the Utah Alternative Assessment with appropriate accommodations as indicated on the individual education program (IEP).

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

E. "The Chafee Amendment to the Copyright Act, 17 U.S.C. Section 121" (Chafee Amendment) is a federal law that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner. Authorized entities are governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

F. "Child Find" means activities and strategies designed to locate, evaluate and identify individuals eligible for services under the IDEA.

G. "Consultation" means a meeting for discussion or the seeking of advice.

H. "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973.

I. "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.

J. "Educational Resource Center" (ERC) is a center under the direction of the USDB that provides information, technology, and instructional materials to assist Utah children with sensory impairments in progressing in the curriculum. It is also the mission of the ERC to facilitate access to materials, information and training for teachers and parents of children with sensory impairments.

K. "Hearing impairment/deafness" ('hard of hearing' for purposes of this rule) is defined as follows:

(1) Hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

L. "Local education agency" (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.

M. "National Instructional Materials Access Center (NIMAC) is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

N. "National Instructional Materials Accessibility Standard" (NIMAS) means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

O. "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

P. "Related services" means those supportive services that are necessary for the appropriate implementation of the IEP. These may include but are not limited to speech pathology, audiology, low vision services, orientation and mobility, school counselor, transportation, school nurse, occupational therapy, or physical therapy.

Q. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973 means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

R. "Technical assistance" means assistance to public education employees or licensed educators, and parents and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

S. "USDB" means the Utah Schools for the Deaf and the Blind.

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

U. "Utah State Instructional Materials Access Center (USIMAC) is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

V. Visual impairment (including blindness) is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness that adversely affects a student's educational performance.

W. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-2. 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-25b-203 which directs the Board to appoint Advisory Council members and assign a USOE staff member as a liaison between the Board and the Advisory Council, Section 53A-25b-302 which directs the Board to establish entrance policies and procedures to be considered, consistent with IDEA, for student placement recommendations at the USDB, Section 53A-25b-501 to establish USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources, 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 provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-3. Board Authority Over and Support for USDB.

A. Consistent with Section 53A-25b-201, The Board is the governing board of the USDB.

B. The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and its executive officer, the State Superintendent of Public Instruction.

C. The Board shall appoint the USDB superintendent on the basis of outstanding qualifications.

(1) The USDB superintendent's term of office is for two years and until a successor is appointed and qualified.

(2) The Board shall set the USDB superintendent's compensation for services.

(3) The USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board.

D. The Board shall direct the USOE to support, provide assistance and work cooperatively with the USDB in providing services to designated Utah students.

E. The Board shall assign a liaison as provided in Section 53A-25b-203(8) to provide appropriate supervision to the USDB to ensure compliance with the law.

F. The Board and USOE staff, as assigned, shall assist the USDB and its superintendent and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(1) The USDB superintendent and associates may hire staff and teachers as needed for the USDB. Teachers and staff shall be appropriately licensed, credentialed or trained for their specific assignments.

(2) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(3) The USDB superintendent and associates shall communicate regularly and effectively with the USOE and provide a report to the Board at least annually or as requested by the Board.

R277-800-4. USDB Advisory Council.

A. The Board shall appoint and support Advisory Council members as directed in Section 53A-25b-203.

B. Advisory Council members shall be appointed for two year terms and may serve no more than three consecutive terms. Advisory Council members serve at the pleasure of the Board.

C. If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner by seeking nominations from the representative group of the resigning member.

D. The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for nominating and recommending dismissal of Advisory Council members, and setting ethical standards for Advisory Council members.

(1) The bylaws shall include operating procedures for the Advisory Council; and

(2) the bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

E. Advisory Council membership and school community council membership:

(1) Members of the Advisory Council may serve as school community council members under Section 53A-1a-108(4) and R277-491.

(2) The USDB school community council and election process shall be consistent with Section 53A-1a-108 and R277-491.

(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students in voting and school community council meetings.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

A. To be eligible to receive services from the USDB, a student must be a resident of Utah and meet requirements of Section 53A-25b-301.

B. A student's placement at USDB, in a school/school district or charter school shall be determined by the student's IEP under IDEA or Section 504 accommodation plan.

C. Consistent with Section 53A-25b-301(3)(c), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with IDEA using the Blind/Visually Impaired Outline, Deaf/Hard of Hearing Outline, or Deafblind Outline as guidance. The outlines are hereby incorporated by reference and included with this rule.

D. It is the responsibility of the student's district of residence or charter school to conduct Child Find under R277-800-1F, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(1) A representative from the student's district of residence or charter school and a representative from the USDB shall be invited to the student's initial IEP or Section 504 accommodation plan meeting.

(2) The parental preference shall be considered in the IEP or Section 504 accommodation plan process consistent with Section 53A-25b-301(3)(c).

E. When USDB is the designated LEA, USDB has full responsibility for all services defined in the IEP/Section 504 accommodation plan. A representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation team.

F. When the district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB may be designated by the team as a related service provider. The USDB remains a required member of the student's IEP or 504 accommodation plan team.

G. The IEP or Section 504 accommodation plan shall clearly define what services are to be provided by the related service provider(s).

H. The IEP or Section 504 team shall determine the designated LEA for student placement.

I. Parent complaints regarding student placement at district of residence or USDB:

(1) If a parent is dissatisfied with a student's placement at USDB or district of residence or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, August 2007.

(2) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and district of residence, or for the USDB and district of residence to share responsibility for serving a student, the parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, August 2007.

R277-800-6. LEA and Board Interagency Agreement.

A. The Board, USOE and LEAs, with assistance from the USDB shall develop an Interagency Agreement that further explains roles, services, and financial obligations to students

and participating entities and a basic process for resolving disagreements among the parties to the Agreement.

B. The Board shall also designate a USOE arbitrator or a panel of arbitrators to resolve disagreements among the USOE, the USDB, and LEAs regarding services to blind, visually impaired, deaf, hard of hearing, and deafblind students in order to provide ser.

R277-800-7. USDB Programs and Services-Student Eligibility.

A. The USDB shall provide services and resources only for students who are deaf, blind or deafblind.

(1) A student with multiple disabilities whose disabilities include blindness, deafness or deafblindness may receive USDB services consistent with the student's IEP.

(2) Non-disabled preschool-age children may participate in USDB funded preschool programs consistent with the requirements of IDEA that students with disabilities must be served in the least restrictive environment and that groups or classes of students with disabilities must include non-disabled peers. Non-disabled children participating in these programs shall pay fees or tuition or both in order to participate.

B. When the USDB is the designated LEA, the USDB shall provide all appropriate services to the student consistent with the student's IEP or Section 504 accommodation plan. Services may include:

(1) USDB instructional supports:

(a) assessments for eligibility, placement, and educational programming and evaluation;

(b) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;

(c) augmentative communication devices;

(d) assistive technology as needed;

(e) educational technology as needed;

(f) access to ERC;

(g) extended school year as determined by the IEP team;

(2) USDB related services to support student needs:

(a) audiology services as needed;

(b) behavior intervention;

(c) low vision services;

(d) nursing;

(e) occupational therapy;

(f) orientation and mobility;

(g) psychology;

(h) physical therapy;

(i) speech and language therapy;

(j) social work as needed;

(k) transportation, consistent with the USDB transportation policy.

(3) Services for students who are deaf/hard of hearing:

(a) American Sign Language/English bilingual instruction;

(b) auditory/oral instruction;

(c) auditory therapy;

(d) cued speech transliteration;

(e) American Sign Language interpretation;

(f) oral transliteration.

(4) Services for students who are blind/visually impaired:

(a) Braille instruction;

(b) instruction in the expanded core curriculum;

(c) environmental awareness;

(d) orientation and mobility support.

(5) Services for students who are deafblind:

(a) deafblind consultant;

(b) communication intervener.

C. When the USDB is determined by the IEP or Section 504 accommodation plan team to act as the outreach program provider, the USDB shall provide technical assistance, consultation, and professional development on issues related to sensory disabilities available to LEAs from the USDB at no charge. Services consistent with the student's IEP or Section 504 accommodation plan may include:

(1) assessments for eligibility, placement, and educational programming and evaluation;

(2) assistive and educational technology;

(3) technology demonstration labs;

(4) transition planning;

(5) audiology services as needed;

(6) instructional strategies;

(7) instructional materials;

(8) Braille or large print or both;

(9) communication methodologies;

(10) accommodations as necessary for educational gain;

(11) modifications as necessary for educational gain;

(12) educational interventions;

(13) low vision services;

(14) occupational therapy;

(15) physical therapy;

(16) psychology;

(17) speech/language pathology;

(18) vision and hearing screening;

(19) interpreter training.

D. The following services shall be provided by the USDB to the LEA of a student with sensory disabilities at no cost to the LEA:

(1) deafblind services (as determined through the IEP):

(a) consultation with the student's teacher, parent and the student;

(b) communication intervener.

(2) orientation and mobility;

(3) diagnostic services:

(a) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;

(b) deafblind state assessment and coaching team.

E. The following designated services shall be available from USDB at no charge for LEAs with less than three percent of the total Utah student population:

(1) outreach teacher:

(a) sensory-specific services to students:

(i) instruction;

(ii) assessments for eligibility, placement, and educational programming and evaluation;

(iii) monitoring of student progress.

(b) supports to classroom teacher:

(i) consultation;

(ii) technical assistance.

(2) Related services to support the student:

(a) audiology;

(b) low vision services.

(3) The USOE shall designate annually the LEAs that meet the three percent eligibility standards for specific identified services.

F. LEAs may contract with USDB to provide the following services, if qualified personnel are available:

(1) outreach teacher;

(2) related services;

(3) ASL interpretation;

(4) assessment;

(5) assistive and educational technology instruction.

G. The following materials are available to LEAs on loan from the USDB. The duration of the loan and immediate availability of resources may vary:

(1) ERC:

(a) textbooks (Braille, large print);

(b) teaching aids;

(c) library materials;

(d) professional library;

(e) described and captioned media.

(2) technology loan programs (limited to 30 days):

(a) assistive and adaptive technology loan program;
(b) related services technology loan program.
(3) The USDB shall develop a policy and process for publishing annually a list of materials available for loan, LEAs to whom materials may be loaned, and loan periods.
(a) The policy shall emphasize communication among LEAs and the USDB about availability of resources. Resources shall be determined by a student's IEP or Section 504 accommodation plan; the origin of the resources may be determined between an LEA and the USDB.
(b) The USDB shall develop a protocol for use in reviewing and ordering materials not immediately available when requested, as part of a student's education program.
(c) Students/parents/guardians are on notice that materials are loaned for the use of the student for a designated period for educational purposes. If loaned materials are lost, stolen, or damaged intentionally or due to student negligence, the student/parent/guardian shall be responsible to reimburse the LEA or USDB for the costs of the materials.

R277-800-8. Payment by LEAs for USDB Services Beyond USDB Obligation.
A. Certain services provided by USDB personnel, employees or contract employees are identified in R277-800-7 and shall be provided to LEAs at no cost consistent with the student's IEP or Section 504 accommodation plan.
B. Other services and resources may be available to LEAs from the USDB for a reasonable charge or fee paid by the LEA, to the extent of resources or personnel available. These services include:
(1) outreach teachers;
(2) related services;
(3) American Sign Language;
(4) student assessment; and
(5) assistive and educational technology instruction.
C. The USOE, USDB and LEAs shall determine appropriate fees, consistent statewide, for services subject to review by the Board, and notice to LEAs and parents of children currently receiving services from the USDB. The USDB shall review and publish its fee schedule for services to LEAs annually.

R277-800-9. Assessment of USDB Students with Visual and Hearing Impairments Served in LEAs of Residence.
A. Students shall be assessed consistent with Section 53A-1-601 et seq., R277-402, R277-700, R277-705, IDEA, Section 504 of the Rehabilitations Act, and Section 53A-25B-304.
B. The USDB shall establish an assessment policy and guidelines to implement required assessments and address:
(1) appropriate, complete and timely evaluations of students;
(2) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans and individual teachers;
(3) complete and accurate required assessments available to eligible students consistent with state and school district assessment timelines and availability of materials for non-disabled students;
(4) staff training and preparation on appropriate administration of assessments and reporting of assessment results; and
(5) procedures to ensure appropriate interpretation of assessments and results for parents and use of assessment results by USDB personnel.

R277-800-10. Outreach Programs.
A. The USDB and school districts or charter schools may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in public school classrooms in locations other than the USDB campus.
B. School districts or charter schools shall provide:
(1) classroom(s);
(2) basic instructional materials;
(3) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the school district or charter school;
(4) administrative support;
(5) basic secretarial services;
(6) special education related services.
C. The USDB shall provide:
(1) classroom instructors, including aides;
(2) instructional materials specific to the disability of the students.
D. The responsibilities of the USDB and a school district or charter school may be reassigned as negotiated between the school district or charter school and the USDB.
E. A school district or charter school shall claim the state WPU if the school district or charter school provides all items or services identified in R277-800-10B.

R277-800-11. USDB Fiscal Procedures.
A. The USDB shall keep fiscal, program and accounting records as required by the Board and shall submit reports required by the Board.
B. The USDB shall follow state standards for fiscal procedures, auditing and accounting, consistent with Section 53A-25b-105.
C. The USDB is a public state entity under the direction of the Board and as such is subject to state laws identified in Section 53A-25b-105 including State Money Management Act, Open and Public Meetings Act, Risk Management, State Building Board and Division of Facilities Construction and Management, Information Technology Services, Archives and Records Services, Utah Procurement Code, Budgetary Procedures Act, and Utah State Personnel Management Act.
D. The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs.
E. Federal reimbursement funds (IDEA and Medicaid) shall be recovered quarterly during the year. Reimbursement amounts shall be identified in the current year's or no later than the subsequent year's budget.
F. The revenue from the federal land grant designated for the maintenance of the School for the Blind and for the School for the Deaf shall be used solely for the benefit of USDB students and the recommended or designated use of the fund is subject to review by the Board.

R277-800-12. Utah State Instructional Materials Access Center (USIMAC).
A. The Board authorizes the establishment of the USIMAC to produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.
B. The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.
C. The USOE shall oversee the operations of the USIMAC.
D. The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature.
E. LEAs may purchase accessible instructional materials

using their own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established procedures to ensure timely access for students with print disabilities.

F. For LEA textbook requests submitted by April 1 of the preceding school year, the USIMAC shall provide the textbook in the requested alternate format by the beginning of the following school year.

G. The USDB ERC shall serve as the repository and distribution center for the USIMAC.

H. Operation of the USIMAC

(1) Qualifying students: A student qualifies for accessible instructional materials from USIMAC (Braille, audio, large print, digital formats) following LEA determination that the student has a print disability in accordance with the Chafee Amendment, IDEA, or Section 504 of the Rehabilitation Act.

(2) Costs for developing core instructional materials:

(a) Textbooks for blind, vision impaired or deafblind students served by the USDB or LEAs shall be requested by the LEA consistent with the student's IEP or Section 504 accommodation plan.

(b) When an LEA requests a core instructional textbook that was published before August 2006, the USIMAC shall conduct a search for the textbook within existing resources and, if available, the textbook shall be sent to the ERC for distribution to the LEA.

(i) If the textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(ii) If the textbook is available through the American Printing House for the Blind (APH) the textbook shall be ordered and sent to the ERC for distribution to the LEA.

(iii) If the textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(iv) If the textbook is not available for purchase, the USIMAC will produce the textbook and send it to the ERC for distribution.

(A) The USIMAC shall purchase the LEA-requested textbook in accordance with copyright law. The cost of the student edition textbook shall be charged to the requesting LEA.

(B) The USIMAC shall produce the textbook in the LEA requested alternate format in accordance with the cost sharing outlined in the Interagency Agreement described in R277-800-6.

(c) The sharing of costs for purchases described in R277-800-12 shall be outlined in the Interagency Agreement described in R277-800-6. The presumption is that the LEA shall pay 75 percent of the cost and USIMAC shall pay 25 percent of the cost.

(d) For textbooks published since August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.

(3) Textbook publishers required to meet NIMAS requirements:

(a) All approved textbook contracts for the state of Utah for instructional materials published since August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to provide the NIMAS file set to the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines, the USIMAC shall bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set.

(c) The publisher shall be advised of the rule; the Utah Instructional Materials Commission under R277-469 shall not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(d) Requests for audio books shall be accessed through the USIMAC as appropriate or through the Recording for the Blind and Dyslexic (RFB and D) and Bookshare. Membership is required for RFB and D and Bookshare and the request is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

KEY: educational administration

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Notice of Continuation July 23, 2009	**53A-1-401(3)**
	53A-25b-203
	53A-25b-302
	53A-25b-501

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10, 264.18(a)(2), and 279.1, 2008 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace" where "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 1997 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means "Executive Secretary;" and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Division" means the Division of Solid and Hazardous Waste.

(3) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(4) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(5) "POHC's" means principle organic hazardous constituents.

(6) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(7) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(8) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(9) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, C = Mean + t x Standard Deviation/$n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, C = exp (Mean of lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x $H/(n - 1)^{1/2}$), where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance

exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, 2001 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

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Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Board has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)."

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(17), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) RESERVED.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under R315-2-16 and R315-2-17, or paragraph (f) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, which incorporates by reference 40 CFR 261 subpart D, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per

liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) or (f) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification,

including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(f)(1) A hazardous waste that is listed in R315-2-10 or R315-2-11 solely because it exhibits one or more characteristics of ignitability as defined under R315-2-9(d), corrosivity as defined under R315-2-9(e), or reactivity as defined under R315-2-9(f) is not hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d), (e), (f), or (g).

(2) The exclusion described in paragraph (f)(1) of this section also pertains to

(i) Any mixture of a solid waste and a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(a)(2)(iv); and,

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(c)(2)(i).

(3) Wastes excluded from R315-2-3 are subject to R315-13-1, which incorporates by reference 40 CFR 268, (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under R315-2-4(b)(7) and a hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d) - (g) for which the hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, was listed.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood

preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its

potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Executive Secretary, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(a)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Executive Secretary which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Executive Secretary that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Executive Secretary an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which

incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-

the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the

following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement

of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has

been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity

if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2002 ed., as amended by 70 FR 9138, February 24, 2005, is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 2000 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Executive Secretary. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Executive Secretary requires.

(f) Nothing in R315-2-13(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in section 19-6-111. A person applying for a variance under R315-9-2 shall provide such information described under R315-2-13(d) as the Executive Secretary directs.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative 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 R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The

request shall:
(1) be in writing;
(2) be addressed to the Executive Secretary;
(3) include the order number;
(4) state the facts;
(5) state the relief sought; and
(6) state the reasons the relief requested should be granted.
(c) Utah Administrative Procedures Act, 63G-4, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.
(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.
(b) Each petition shall include:
(1) The petitioner's name and address;
(2) A statement of the petitioner's interest in the proposed action;
(3) A description of the proposed action, including, where appropriate, suggested regulatory language;
(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;
(5) A full description of the proposed method, including all procedural steps and equipment used in the method;
(6) A description of the types of wastes or waste matrices for which the proposed method may be used;
(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;
(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.
(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.
(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63G-3-601.
(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.
(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:
(1) Substitute "Board" for "Administrator;"
(2) Include the following paragraphs:
(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in 63G-3, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, 63G-4, and R315-12.
(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.
(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.
(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63G-3-601 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.
The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:
Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.
(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:
(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.
The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:
Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.
The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:
Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.
The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:
Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.
The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.
(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become

final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste permit, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 2009 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

R315-2-27. Exclusions/Exemptions.

The requirements as found in 40 CFR subpart E, sections 261.39 through 261.41, 2007 ed., are adopted and incorporated by reference.

KEY: hazardous wastes

January 15, 2010 19-6-105

Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-5. Hazardous Waste Generator Requirements.
R315-5-1. General.

1.10 PURPOSE, SCOPE, AND APPLICABILITY.

(a) R315-5 establishes standards for generators of hazardous waste.

(b) R315-2-5, which incorporates by reference, 40 CFR 261.5(c) and (d), must be used to determine the applicability of provisions of R315-5 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following sections of this rule with respect to that waste: R315-5-1.11, which incorporates by reference 40 CFR 262.11, for determining whether or not he has a hazardous waste, R315-5-1.12 for obtaining an EPA identification number, R315-5-3.34 for accumulation of hazardous waste, R315-5-4.40(c) and (d) for recordkeeping, R315-5-4.43 for additional reporting, and if applicable, R315-5-7 for farmers.

(d) Any person who exports or imports hazardous waste as identified in R315-5-8, which incorporates by reference 40 CFR 262.80(a), and is subject to the manifesting requirements of R315-5, or subject to the universal waste management standards as found in R315-16, to or from the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for recovery shall comply with R315-5-8, which incorporates by reference 40 CFR 262 subpart H.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in R315-5.

(f) A farmer who generates waste pesticides which are hazardous wastes and who complies with all the requirements of R315-5-7 is not required to comply with other standards in this rule or R315-3, R315-7, R315-8, or R315-13, which incorporates by reference 40 CFR 268, with respect to these pesticides.

(g) A person who generates a hazardous waste as defined by R315-2 is subject to the compliance requirements and penalties prescribed in The Utah Solid and Hazardous Waste Act if he does not comply with the requirements of this rule.

A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in R315-3, R315-7, and R315-8.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in R315-5.

The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in R315-3, R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14.

(i) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of R315-5-9, which incorporates by reference 40 CFR 262.200 - 262. 216, are not subject to (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 40 CFR 262.200):

(1) The requirements of R315-5-1.11 or R315-5-3.34, which incorporates by reference 40 CFR 262.34(c), for large quantity generators and small quantity generators, except as provided in R315-5-9, which incorporates by reference 40 CFR 262.200 - 216, and

(2) The conditions of R315-2-5, which incorporates by reference 40 CFR 261.5(b), for conditionally exempt small quantity generators, except as provided in R315-5-9, which incorporates by reference 40 CFR 262.200 - 216.

1.11 HAZARDOUS WASTE DETERMINATION

The requirements of 40 CFR 262.11, 1994 ed., as amended by 60 FR 25540, May 11, 1995, are adopted and incorporated by reference with the following exception:

Substitute "Board" for all federal regulation references made to "Administrator".

1.12 EPA IDENTIFICATION NUMBERS

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Executive Secretary.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Executive Secretary using EPA form 8700-12. Upon receiving the request the Executive Secretary will assign an EPA identification number to the generator.

(c) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that do not have an EPA identification number.

R315-5-2. The Manifest.

A sample hazardous waste manifest form containing information required pursuant to these rules is found in the Appendix to 40 CFR 262. All applicable sections of each manifest shall be completely and legibly filled out.

2.20 GENERAL REQUIREMENTS

(a) A generator who transports, or offers for transportation, a hazardous waste for off-site treatment, storage, or disposal or a treatment, storage, or disposal facility who offers for transport a rejected hazardous waste load shall prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A. The requirements of 40 CFR 262, Appendix, 2009 ed., are adopted and incorporated by reference with the following exception: substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) These manifest requirements do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of R315-5-2 and R315-5-3.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding R315-6-1.10(a), the generator or transporter shall comply with the requirements for transporters

set forth in R315-9-1 and R315-9-3 in the event of a discharge of hazardous waste on a public or private right-of-way.

2.21 MANIFEST TRACKING NUMBERS, MANIFEST PRINTING, AND OBTAINING MANIFESTS

The requirements of 40 CFR 262.21, 2005 ed., are adopted and incorporated by reference.

2.22 NUMBER OF COPIES

The manifest shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

2.23 USE OF THE MANIFEST

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with R315-5-4.40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) Hazardous wastes to be shipped within Utah solely by water (bulk shipments only) require that the generator send three copies of the manifest dated and signed in accordance with this section to the owner and operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of the hazardous wastes within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) The generator shall include on the manifest a description of the hazardous waste(s) as set forth in the regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203.

(f) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

2.27 WASTE MINIMIZATION CERTIFICATION

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

R315-5-3. Pre-Transport Requirements.

3.30 PACKAGING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the Department of Transportation regulations on packaging under 49 CFR 173, 178, and 179.

3.31 LABELING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall label each hazardous waste package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR 172.

3.32 MARKING

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the Department of Transportation regulations on hazardous materials under 49 CFR 172.

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address

Generator's EPA Identification Number

Manifest Tracking Number

3.33 PLACARDING

Prior to transporting hazardous waste or offering hazardous waste for transporting off-site, a generator shall placard or offer the initial transporter the appropriate placards according to the Department of Transportation regulations for the movement of hazardous materials under 49 CFR 172, subpart F. If placards are not required, a generator shall mark each motor vehicle according to 49 CFR 171.3(b)(1).

3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, 2005 ed., are adopted and incorporated by reference with the following addition.

(b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

R315-5-4. Recordkeeping and Reporting.

4.40 RECORDKEEPING

(a) A generator shall keep a copy of each manifest signed in accordance with R315-5-2.23(a) for three years or until a signed copy is received from the designated facility which received the waste. The signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) Records maintained in accordance with this section and any other records which the Board or Executive Secretary deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-5-1.11, which incorporates by reference 40 CFR 262.11, shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Board as provided in R315-2-12 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

(d) The periods of retention referred to in this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Board or its duly appointed representative.

4.41 BIENNIAL REPORTING

(a) A generator who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of a biennial report to the

Executive Secretary by March 1 of each even numbered year. The biennial report shall be submitted on EPA Form 8700-13A and must cover generator activities during the previous calendar year, and must include the following information:

(1) The EPA identification number, name, and address of the generator;

(2) The calendar year covered by the report;

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

(5) A description, EPA hazardous waste number, from R315-2-9, R315-2-10, or R315-2-11, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by EPA Identification number of each off-site facility to which waste was shipped;

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for years prior to 1984;

(8) The certification signed by the generator or authorized representative.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of R315-3, R315-7, and R315-8. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth in R315-5-5, which incorporates by reference 40 CFR 262.56.

4.42 EXCEPTION REPORTING

(a)(1) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated treatment, storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of greater than 1000 kilograms of hazardous waste in a calendar month shall submit an Exception Report to the Executive Secretary if he has not received a signed copy of the manifest from the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall consist of a legible copy of the manifest for which the generator does not have confirmation of delivery and a cover letter signed by the generator or his authorized representative explaining the efforts taken by the generator to locate the hazardous waste, and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Executive Secretary. The submission to the Executive Secretary need only be a hand written or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

4.43 ADDITIONAL REPORTING

The Board or Executive Secretary, as is deemed necessary pursuant to these rules, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in Section R315-2-9, R315-2-10, or R315-2-11.

4.44 SPECIAL REQUIREMENTS FOR GENERATORS OF BETWEEN 100 AND 1000 KG/MO

A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements in R315-5-4:

(a) R315-5-4.40(a), (c), and (d);

(b) R315-5-4.42(b); and

(c) R315-5-4.43.

R315-5-5. Exports of Hazardous Waste.

The provisions of 40 CFR 262 subpart E, 262.50 - 262.58, 2005 ed., are adopted and incorporated by reference within this rule, except for the following changes:

(a) Other than in Section 40 CFR 262.53, substitute "Executive Secretary" for all references to "EPA" or "Regional Administrator".

(b) Paragraph 40 CFR 262.58(a) shall be as follows:

Any person who exports or imports hazardous waste as identified in 40 CFR 262.80(a) and is subject to the manifesting requirements of R315-5-2, or subject to the universal waste management standards as found in R315-16, to or from the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for recovery shall comply with R315-5-8, which incorporates by reference 40 CFR 262 subpart H. The requirements of subparts E and F do not apply.

R315-5-6. Imports of Hazardous Waste.

The requirements of 40 CFR 262.60, 2005 ed., are adopted and incorporated by reference.

R315-5-7. Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this rule or other standards in R315-3, R315-7, R315-8, and R315-13, which incorporates by reference 40 CFR 268, for those wastes provided he triple rinses each emptied pesticide container in accordance with R315-2-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

R315-5-8. Transfrontier Shipments of Hazardous Waste for Recovery within the OECD.

The requirements of 40 CFR 262 subpart H, 262.80 - 262.89, 1996 ed., are adopted and incorporated by reference.

R315-5-9. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.

The requirements of 40 CFR 262 subpart K, 262.200 - 262.216, 2009 ed., are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all references made to "Regional Administrator."

KEY: hazardous waste

January 15, 2010 **19-6-105**

Notice of Continuation August 24, 2006 **19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 through 264.554, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2.

(c) The requirements of R315-7 do not apply to the following:

(1) The owner or operator of a POTW with respect to the treatment or storage of hazardous wastes which are delivered to the POTW;

(2) The owner or operator of a facility approved by the State of Utah to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-7 by R315-2-5;

(3) The owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2), (3), and (4), which is incorporated by reference in R315-2-6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR subpart D, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G;

(4) A generator accumulating hazardous waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34, except to the extent the requirements are included in R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(6) The owner or operator of a totally enclosed treatment facility, as defined in R315-1;

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in the Table of Treatment Standards for Hazardous Wastes in 40 CFR 268.40 as incorporated by reference at R315-13, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in R315-7-9.8(b);

(8) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(9)(i) Except as provided in R315-7-8(c)(9)(i), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this section shall comply with all applicable requirements of R315-7-10 and R315-7-11.

(iii) Any person who is covered by R315-7-8(c)(9)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-7 and of R315-3 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a State or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(10) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and R315-7-9.8(b), R315-7-16.2 and R315-7-16.3 are complied with;

(11) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9) handling the wastes listed below. These handlers are subject to regulation under section R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5.

(d) Notwithstanding any other provisions of these rules enforcement actions may be brought pursuant to R315-2-14 or Section 19-6-115 Utah Solid and Hazardous Waste Act.

(e) The following hazardous wastes shall not be managed at facilities subject to regulation under R315-7.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of R315-8-12.1(c) as well as all other applicable requirements of R315-8-12;

(iv) The waste is burned in incinerators that are certified pursuant to the standard and procedures in R315-7-22.6; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in R315-7-23.7.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268, and the R315-13 standards are considered material conditions or requirements of the R315-7 interim status standards.

R315-7-9. General Facility Standards.

9.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

9.2 IDENTIFICATION NUMBER

Every facility owner or operator shall apply for an EPA identification number in accordance with Section 3010 of RCRA. Facility owners or operators who did not obtain an EPA Identification Number for their facilities through the notification process shall obtain one. Information on obtaining this number can be acquired by contacting the Utah Division of Solid and Hazardous Waste Management.

9.3 REQUIRED NOTICES

(a)(1) An owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Board in writing at least four weeks in advance of the expected date of arrival of these shipments at the facility. A notice of subsequent shipments of the same waste from the same foreign sources is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to R315-5-15, which incorporates by reference 40 CFR 262, subpart H, shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of R315-7 and R315-3. An owner's or operator's failure to notify the new owner or operator of the requirements of R315-7 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

9.4 GENERAL WASTE ANALYSIS

The requirements of 40 CFR 265.13, 1996 ed., are adopted and incorporated by reference.

9.5 SECURITY

(a) A facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility; unless

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility will not cause a violation of the requirements of R315-7.

(b) Unless exempt under R315-7-9.5(a)(1) and (a)(2), facilities shall have;

(1) A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier or both, e.g. a fence in good repair or a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry at all times through the gates or other entrances to the active portion of the facility, e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility.

The requirements of R315-7-9.5(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system or a barrier and a means to control entry which complies with the requirements of R315-7-9.5(b)(1) and (2).

(c) Unless exempt under R315-7-9.5(a)(1) and (a)(2), a sign with the legend, "Danger -Unauthorized Personnel Keep Out", shall be posted at each entrance to the active portion of a facility and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and any other language predominant in the area surrounding the facility and shall be legible from a distance of at least twenty-five feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion is potentially dangerous.

Owners or operators are encouraged to also describe on the sign the type of hazard, e.g., hazardous waste, flammable wastes, etc., contained within the active portion of the facility. See R315-7-14.7(b) for discussion of security requirements at disposal facilities during the post-closure care period.

9.6 GENERAL INSPECTION REQUIREMENTS

(a) Facility owners or operators shall inspect their facilities for malfunctions and deterioration, operator errors, and discharges, which may be causing or may lead to (1) release of hazardous waste constituents to the environment or (2) a threat to human health. These inspections shall be conducted frequently enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) Facility owners or operators shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, e.g., dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The schedule shall be kept at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, e.g., inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in R315-7-16.5, R315-7-17, which incorporates by reference 40 CFR 265.190 - 265.201, R315-7-18.5, R315-7-19.12, R315-7-20.5, R315-7-21.12, R315-7-22.4, R315-7-23.4, R315-7-24.4, R315-7-26, which incorporates by reference 40 CFR 265.1033, R315-7-27, which incorporates by reference 40 CFR 265.1052, 265.1053, and 265.1058 and R315-7-30, which incorporates by reference 40 CFR 265.1084 through 265.1090.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall keep records of inspections in an inspection log or summary. These records shall be retained for at least three years. At a minimum, these records shall include the date and time of the inspection, the

name of the inspector, a notation of the observations made, and the date and nature of any repairs made or remedial actions taken.

9.7 PERSONNEL TRAINING

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of R315-7, and that includes all the elements described in R315-7-9.7(d)(3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction supplementing the facility personnel's existing job knowledge, which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, but not necessarily limited to, the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems or both;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel shall successfully complete the program required in R315-7-9.7(a) within six months after the effective date of these rules or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules shall not work in unsupervised positions until they have completed the training requirements of R315-7-9.7(a).

(c) Facility personnel shall take part in an annual review of their initial training in R315-7-9.7(a).

(d) Owners or operators of facilities shall maintain the following documents and records at their facilities and make them available to the Board or its duly appointed representative upon request:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under R315-7-9.7(d)(1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under R315-7-9.7(d)(1); and

(4) Records that document that the training or job experience required under paragraphs R315-7-9.7(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be maintained until closure of the facility; training records on former employees shall be maintained for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

9.8 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTES

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks, static, electrical, or mechanical, spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flames to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by R315-7, the treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(1) Generate uncontrolled extreme heat or pressure, fire or explosion, or violent reaction;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(4) Damage the structural integrity of the device or facility containing the waste; or

(5) Through other like means threaten human health or the environment.

9.9 LOCATION STANDARDS

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

9.10 CONSTRUCTION QUALITY ASSURANCE PROGRAM

(a) CQA program. (1) A construction quality assurance, CQA, program is required for all surface impoundment, waste pile, and landfill units that are required to comply with R315-7-18.9(a), R315-7-19.9, and R315-7-21.10(a). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes, flexible membrane liners;

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. Before construction begins on a unit subject to the CQA program under R315-7-9.10(a), the owner or operator shall develop a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in R315-7-9.10(a)(2), including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be

recorded and retained in the operating record under R315-7-12.4.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in R315-7-9.10(a)(2);

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components, e.g., pipes, according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under R315-8-11.2, R315-8-12.2, and R315-8-14.2.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of R315-8-11.2(c)(1), R315-8-12.2(c)(1), and R315-8-14.2(c)(1) in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of R315-8-11.2(c)(1), R315-8-12.2(c)(1), and R315-8-14.2(c)(1) in the field.

(d) Certification. The owner or operator of units subject to R315-7-9.10 shall submit to the Executive Secretary by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of R315-8-11.2(a), R315-8-12.2, or R315-8-14.2(a). The owner or operator may receive waste in the unit after 30 days from the Executive Secretary's receipt of the CQA certification unless the Executive Secretary determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification shall be furnished to the Executive Secretary upon request.

R315-7-10. Preparedness and Prevention.

10.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

10.2 MAINTENANCE AND OPERATION OF FACILITY

Facilities shall be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

10.3 REQUIRED EQUIPMENT

All facilities shall be equipped with the following, unless there are no hazards posed by waste handled at the facility which could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility employees;

(b) A device capable of summoning external emergency assistance from law enforcement agencies, fire departments or state or local emergency response teams, such as a telephone, immediately available at the scene of operations, or a hand-held two way radio;

(c) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, discharge control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

10.4 TESTING AND MAINTENANCE OF EQUIPMENT

All facility communications or alarm systems, fire protection equipment, safety equipment, discharge control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

10.5 ACCESS TO COMMUNICATIONS OR ALARM SYSTEM

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all employees involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless a device is not required under R315-7-10.3.

(b) If there is just one employee on the premises while the facility is operating, he shall have immediate access to a device capable of summoning external emergency assistance, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, unless a device is not required under R315-7-10.3.

10.6 REQUIRED AISLE SPACE

The facility owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, discharge control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

10.7 ARRANGEMENTS WITH LOCAL AUTHORITIES

(a) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize law enforcement agencies, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to the roads inside the facility, and possible evacuation routes;

(2) Where more than one law enforcement agency and fire department might respond to an emergency, agreements designating primary emergency authority to a specific law enforcement agency and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where state or local authorities decline to enter into these arrangements, the owner or operator shall document the refusal in the operating record.

R315-7-11. Contingency Plan and Emergency Procedures.

11.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

11.2 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) Each owner or operator shall have a contingency plan for his facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned

sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten the environment or human health.

11.3 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to comply with R315-7-11.2 and R315-7-11.7 in response to fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If a facility owner or operator already has prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions sufficient to comply with the requirements of R315-7.

(c) The plan shall describe arrangements agreed to by local law enforcement agencies, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, in accordance with R315-7-10.7.

(d) The plan shall list names, addresses, phone numbers, office and home, of all persons qualified to act as facility emergency coordinator, see R315-7-11.6, and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, discharge control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up-to-date. In addition, the plan shall include the location and physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by discharges of hazardous waste or fires.

11.4 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Made available to the Board or its duly appointed representative upon request; and

(c) Submitted to all local law enforcement agencies, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

11.5 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed, and immediately amended, if necessary, under any of the following circumstances:

(a) Revisions to applicable regulations;

(b) Failure of the plan in an emergency;

(c) Changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for discharges of hazardous waste or hazardous waste constituents, or change the response necessary in an emergency;

(d) Changes in the list of emergency coordinators; or

(e) Changes in the list of emergency equipment.

11.6 EMERGENCY COORDINATOR

At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This facility emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in R315-7-11.7. Applicable responsibilities for the emergency coordinator vary depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

11.7 EMERGENCY PROCEDURES

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles whenever their assistance is needed.

(b) In the event of a discharge, fire, or explosion, the facility's emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any discharged materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the facility's emergency coordinator shall immediately assess possible hazards to the environment or human health that may result from the discharge, fire, or explosion. This assessment shall consider both direct and indirect effects of the discharge, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(d) If the emergency coordinator determines that the facility has had a discharge, fire, or explosion which could threaten human health or the environment, outside the facility, he shall report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to assist appropriate officials in making the decision whether local areas should be evacuated; and

(2) He shall immediately notify both the Utah State Department of Environmental Quality as specified in R315-9 and the government officials designated as the on-scene coordinator for that geographical area, in the applicable regional contingency plan under 40 CFR 1510, or the National Response Center, 800/424-8802. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, e.g., discharge, fire;

(iv) Name and quantity of material(s) involved, to the extent available;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the facility's emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing discharged waste, and removing or isolating containers.

(f) If the facility stops operations in response to a discharge, fire, or explosion, the facility's emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment,

wherever this is appropriate.

(g) Immediately after an emergency, the facility's emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility.

Unless the owner or operator can demonstrate, in accordance with R315-2-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements in R315-4, R315-5, R315-7, and R315-8.

(h) The facility's emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the discharged material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The facility owner or operator shall notify the Board and other appropriate state and local authorities, that the facility is in compliance with R315-7-11.7(h) before operations are resumed in the affected area(s) of the facility.

(j) The facility owner or operator shall record in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Board. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident, e.g., fire, discharge;

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment or human health, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-7-12. Manifest System, Recordkeeping, and Reporting.

12.1 APPLICABILITY

(a) The rules in R315-7-12 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-7-8.1. R315-7-12.2, R315-7-12.3, and R315-7-12.7 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a).

(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-7-12.1, R315-7-12.2, R315-7-12.3, and R315-7-12.7, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.

12.2 USE OF MANIFEST SYSTEM

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or his agent, shall sign and date the manifest as indicated in R315-7-12.1(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any significant discrepancies in the manifest, as defined in R315-7-12.3, on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures) the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-7-12.3(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper;

(3) Immediately give the rail or water, bulk shipment, transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator or a signed and dated copy of the shipping paper, to the generator; and

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

The provisions of R315-5-9.1 are applicable to the on-site accumulation of hazardous wastes by generators and only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315-5-15, which incorporates by reference 40 CFR 262 subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

12.3 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are:

(1) Significant differences as defined by R315-7-12.3(b) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of

hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: For bulk waste, variations greater than ten percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days of receipt of the waste, the owner or operator shall immediately submit to the Executive Secretary a letter describing the discrepancy, and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-7-12.3, it must ensure that either the delivering transporter retains custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-7-12.3(e) or (f).

(e) Except as provided in R315-7-12.3(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of R315.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-7-12.3(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(f)(1), (2), (3), (4), (5), and (6).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set for in R315-2-7(b) after it has signed, date, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

12.4 OPERATING RECORD

The requirements as found in 40 CFR 265.73, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

12.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) All records, including plans, required under R315-7 shall be furnished upon written request, and made available at all reasonable times for inspection.

(b) The retention period for all records required under R315-7 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Board.

(c) A copy of records of waste disposal locations required to be maintained under R315-7-12.4, which incorporates by reference 40 CFR 265.73, shall be turned over to the Board and the local land authority upon closure of the facility, see R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120.

12.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of a biennial report to the Board by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data, where required under R315-7-13.5(a)(2)(ii) and (iii) and (b)(2) where required;

(g) The most recent closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, and for disposal facilities, the most recent post-closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.144;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984; and

(j) The certification signed by the owner or operator of the facility or his authorized representative.

12.7 UNMAINFESTED WASTE REPORT

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e), and if the waste is not excluded from the manifest requirements of R315, then the owner or operator shall prepare and submit a single copy of a report to the Board within 15 days after receiving the waste. These reports shall be designated "Unmanifested Waste Report" and include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name, and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

12.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-7-12.6, and R315-7-12.7, a facility owner or operator shall also report to the Board:

(a) Discharges, fires, and explosions as specified in R315-7-11.7(j);

(b) Groundwater contamination and monitoring data as specified in R315-7-13.4 and R315-7-13.5;

(c) Facility closure as specified in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120;

(d) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-7;

(e) As otherwise required by R315-7-26, which incorporates by reference 40 CFR 265.1030 - 265.1035, R315-7-27, which incorporate by reference 40 CFR 265 265.1050 - 265.1064 and R315-7-30, which incorporates by reference 40 CFR 265.1080 - 265.1091.

R315-7-13. Groundwater Monitoring.

13.1 APPLICABILITY

(a) The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as R315-7-8.1 and R315-7-13.1(c) provide otherwise.

(b) Except as R315-7-13.1(c) and (d) provide otherwise, the owner or operator shall install, operate, and maintain a groundwater monitoring system which meets the requirements of R315-7-13.2, and shall comply with R315-7-13.3 - R315-7-13.5. This groundwater monitoring program shall be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the groundwater monitoring sampling and analysis requirements of this section may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells, domestic, industrial, or agricultural, or to surface water. This demonstration shall be in writing, and shall be kept at the facility. This demonstration shall be certified by a qualified geologist or geotechnical engineer and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, run-off, and infiltration; and

(ii) Unsaturated zone characteristics, i.e., geologic materials, physical properties, and depth to groundwater; and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics, i.e., geologic materials, physical properties, and rate of groundwater flow; and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes, or knows, that groundwater monitoring of indicator parameters in accordance with R315-7-13.2 and R315-7-13.3 would show statistically significant increases, or decreases in the case of pH, when evaluated under R315-7-13.4(b), he may install, operate, and maintain an alternate groundwater monitoring system, other than the one described in R315-7-13.2 and R315-7-13.3. If the owner or operator decides to use an alternate groundwater monitoring system he shall:

(1) Submit to the Board a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of R315-7-13.4(d)(3) for an alternate groundwater monitoring system;

(2) Initiate the determinations specified in R315-7-13.4(d)(4);

(3) Prepare and submit a written report in accordance with R315-7-13.4(d)(5);

(4) Continue to make the determinations specified in R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility; and

(5) Comply with the recordkeeping and reporting requirements in R315-7-13.5(d).

(e) The groundwater monitoring requirements of this section may be waived with respect to any surface impoundment that (1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristics under R315-2-9 or are listed as hazardous wastes in R315-2-10 only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must be established, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) The Executive Secretary may replace all or part of the requirements of R315-7-13 applying to a regulated unit, as defined in R315-8-6, with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document, as defined in R315-3-1.1(e)(7), where the Executive Secretary determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of R315-7-13 because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of R315-8-6.12(a).

13.2 GROUNDWATER MONITORING SYSTEM

(a) A groundwater monitoring system shall be capable of yielding groundwater samples for analysis and shall consist of:

(1) Monitoring wells, at least one, installed hydraulically upgradient, i.e., in the direction of increasing static head from the limit of the waste management area. Their number, locations, and depths shall be sufficient to yield groundwater samples that are:

(i) Representative of background groundwater quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility.

(2) Monitoring wells, at least three, installed hydraulically downgradient, i.e., in the direction of decreasing static head, at the limit of the waste management area. Their number, locations, and depths shall ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

(b) Separate monitoring systems for each waste management component of the facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary perimeter.

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space, i.e., the space between the bore hole and well casing above the sampling depth shall be sealed with a suitable material, e.g., cement grout or bentonite slurry, to prevent contamination of samples and the ground water.

13.3 SAMPLING AND ANALYSIS

(a) The owner or operator shall obtain and analyze samples from the installed groundwater monitoring system. The owner or operator shall develop and follow a groundwater sampling and analysis plan. He shall keep this plan at the facility. The plan shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

See "Procedures Manual for Groundwater Monitoring at Solid Waste Disposal Facilities," EPA-530/SW-611, August 1977 and "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979 for discussions of sampling and analysis procedures.

(b) The owner or operator shall determine the concentration or value of the following parameters in groundwater samples in accordance with R315-7-13.3(c) and (d):

(1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in R315-50-3, which incorporates by reference 40 CFR 265, Appendix III.

(2) Parameters establishing groundwater quality:

(i) Chloride

(ii) Iron

(iii) Manganese

(iv) Phenols

(v) Sodium

(vi) Sulfate

These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under R315-7-13.4(d).

(3) Parameters used as indicators of groundwater contamination:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(c)(1) For all monitoring wells, the owner or operator shall establish initial background concentrations or values of all parameters specified in R315-7-13.3(b). He shall do this quarterly for one year.

(2) For each of the indicator parameters specified in R315-7-13.3(b)(3), at least four replicate measurements shall be obtained for each sample and the initial background arithmetic mean and variance shall be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells shall be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish groundwater quality shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(2) at least annually.

(2) Samples collected to indicate groundwater contamination shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(3) at least semiannually.

(e) Elevation of the groundwater surface at each monitoring well shall be determined each time a sample is obtained.

13.4 PREPARATION, EVALUATION, AND RESPONSE

(a) The owner or operator shall prepare an outline of a groundwater quality assessment program. The outline shall describe a more comprehensive groundwater monitoring program, than that described in R315-7-13.2 and R315-7-13.3, capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

(b) For each indicator parameter specified in R315-7-13.3(b)(3), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with R315-7-13.3(d)(2) and compare these results with its initial background arithmetic mean. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Students t-test at the 0.01 level of significance, see R315-50-4, to determine statistically significant increases, and decreases, in the case of pH, over initial background.

(c)(1) If the comparisons for the upgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall submit this information in accordance with R315-7-13.5(a)(2)(ii).

(2) If the comparisons for downgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall then immediately obtain additional groundwater samples from those downgradient wells where a significant difference was detected, split the samples in two, and expeditiously obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under R315-7-13.4(c)(2) confirm the significant increase, or pH decrease, the owner or operator shall provide written notice to the Board--within seven days of the date of the confirmation--that the facility may be affecting groundwater quality.

(2) Within 15 days after the notification under R315-7-13.4(d)(1), the owner or operator shall develop and submit to the Board a specific plan, based on the outline required under R315-7-13.4(a) and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

(3) The plan to be submitted under R315-7-13.1(d)(1) or R315-7-13.4(d)(2) shall specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously-gathered groundwater quality information; and

(iv) A schedule of implementation.

(4) The owner or operator shall implement the groundwater quality assessment plan which satisfies the requirements of R315-7-13.4(d)(3), and, at a minimum, determine:

(i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and

(ii) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

(5) The owner or operator shall make his first determination under R315-7-13.4(d)(4) as soon as technically feasible, and, within 15 days after that determination submit to the Board a written report containing an assessment of the groundwater quality.

(6) If the owner or operator determines, based on the results of the first determination under R315-7-13.4(d)(4), that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in R315-7-13.3 and R315-7-13.4(b). If the owner or operator reinstates the indicator evaluation program, he shall so notify the Board in the report submitted under R315-7-13.4(d)(5).

(7) If the owner or operator determines, based on the first determination under R315-7-13.4(d)(4), that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he:

(i) Must continue to make the determinations required under R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility, if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under R315-7-13.4(d)(4), if the groundwater quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of R315-7-13, any groundwater quality assessment to satisfy the requirements of R315-7-13.4(d)(4) which is initiated prior to final closure of the facility shall be completed and reported in accordance with R315-7-13.4(d)(5).

(f) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), at least annually the owner or operator shall evaluate the data on groundwater surface elevations obtained under R315-7-13.3(e) to determine whether the requirements under R315-7-13.2(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that R315-7-13.2(a) is no longer satisfied, the owner or operator shall immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

13.5 RECORDKEEPING AND REPORTING

(a) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses required in R315-7-13.3(c) and (d), the associated groundwater surface elevations required in R315-7-13.3(e), and the evaluations required in R315-7-13.4(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following groundwater monitoring information to the Board:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in R315-7-13.3(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in 40 CFR 265, Appendix III.

(ii) Annually: concentrations or values of the parameters listed in R315-7-13.3(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under R315-7-13.4(b). The owner or operator shall separately identify any significant differences from initial background found in the upgradient wells, in accordance with R315-7-13.4(c)(1). During the active life of the facility, this information shall be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: results of the evaluation of groundwater surface elevations under R315-7-13.4(f), and a description of the response to that evaluation, where applicable.

(b) If the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of R315-7-13.4(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Board a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report shall be submitted no later than March 1, following each calendar year.

R315-7-14. Closure and Post-Closure.

The requirements as found in 40 CFR 265 subpart G (265.110 - 265.121), 1998 ed., as amended by 63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Board" for all references to "Administrator" or "Regional Administrator".

(b) Substitute the word "appointee" for "employee."

(c) Substitute "Board" for "Agency."

(d) Substitute 19-6 for references to RCRA.

R315-7-15. Financial Requirements.

The requirements as found in 40 CFR 265 subpart H (265.140 - 265.150), 1998 ed., as amended by 63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator."

(b) substitute "Board" for all references to "Agency" or "EPA".

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references to "the Resource Conservation and Recovery Act" or "RCRA."

R315-7-16. Use and Management of Containers.

16.1 APPLICABILITY

The rules in this section apply to the owners or operators of all hazardous waste management facilities that store containers of hazardous waste, except as provided otherwise in R315-7-8.1.

16.2 CONDITION OF CONTAINERS

The container holding hazardous waste shall be in good condition and shall not leak. If a container is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from the container to a storage container that is in good condition, or manage the waste in another fashion which complies with the requirements of R315-7.

16.3 COMPATIBILITY OF WASTE WITH CONTAINER

Owners or operators shall use containers made of or lined with materials which will not react with, and are otherwise compatible with, the waste to be stored, so that the ability of the container to contain the waste is not impaired.

16.4 MANAGEMENT OF CONTAINERS

(a) A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

Reuse of containers is also governed by the U.S. Department of Transportation regulations, including those set forth in 49 CFR 173.28.

16.5 INSPECTIONS

In addition to the inspections required by R315-7-9.6, the owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. See R315-7-16.2 for remedial action required if deterioration or leaks are detected.

16.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Containers holding ignitable or reactive waste shall be located more than 15 meters, 50 feet, from the facility's property line.

See R315-7-9.8 for additional requirements.

16.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTE

(a) Incompatible wastes or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same container, unless R315-79.8(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see 40 CFR 265, Appendix V for examples, unless R315-7-9.8(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, open tanks, piles, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous wastes or hazardous constituents which could result from the mixing of incompatible materials.

16.8 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of R315-7-26, which incorporates by reference 40 CFR subpart AA, R315-7-27, which incorporates by reference 40 CFR subpart BB, and R315-7-30, which incorporates by reference 40 CFR subpart CC.

R315-7-17. Tanks.

The requirements as found in 40 CFR 265 subpart J, 265.190-265.202, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Regional Administrator" found in 40 CFR 265 subpart J with the exception of 40 CFR 265.193(g) and (h)(5), which will

replace "Regional Administrator" with "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, 1988, for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or within two years after December 16, 1988, for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988, for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988, for non-HSWA existing tank systems; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988, for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265.193(a)(5), "or December 16, 1988, for non-HSWA tank systems."

R315-7-18. Surface Impoundments.

18.1 APPLICABILITY

The rules in this section apply to the owners and operators of facilities that use surface impoundments for the treatment, storage, or disposal of hazardous waste, except as provided otherwise in R315-7-8.1.

18.2 ACTION LEAKAGE RATE

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) must submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-18.9(b). Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-18.9(a). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-7-18.5(b), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit closes in accordance with R315-7-18.6, which incorporates by reference 40 CFR 265.228(a)(2), monthly during the post-closure care period when monthly monitoring is required under R315-7-18.5(b).

18.3 CONTAINMENT SYSTEM

All earthen dikes shall have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

18.4 WASTE ANALYSIS AND TRIAL TESTS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, whenever a surface impoundment is used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator shall, before treating the different waste or using the different process:

(i) Conduct waste analyses and trial treatment tests, e.g., bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with R315-7-9.8(b).

The owner or operator shall record the results from each waste analysis and trial test in the operating record of the facility, see R315-7-12.4, which incorporates by reference 40 CFR 265.73.

18.5 MONITORING AND INSPECTIONS

(a) The owner or operator shall inspect:

(1) The freeboard level at least once each operating day to ensure compliance with R315-7-18.2, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leads, deterioration, or failures in the impoundment.

(b)(1) An owner or operator required to have a leak detection system under R315-7-18.9(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with R315-7-18.2(a).

The owner or operator shall remedy any deterioration or malfunction he finds.

18.6 CLOSURE AND POST-CLOSURE

The requirements as found in 40 CFR 265.228, 1992 ed., are adopted and incorporated by reference.

18.7 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of R315-13, which incorporates by

reference 40 CFR 268, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f); and

(2) R315-7-9.8(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) Maintain and monitor the leak detection system in accordance with R315-8-11.2(c)(2)(iv) and (3) and R315-7-18.5(b) and comply with all other applicable leak detection system requirements of R315-7;

(3) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(4) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

18.8 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same surface impoundment, unless they will not generate heat, fumes, fires, or explosive reactions that could damage the structural integrity of the impoundment, or otherwise threaten human health or the environment.

18.9 DESIGN REQUIREMENTS

(a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with R315-7-18.9(c), unless exempted under R315-7-18.9(d), (e), or (f). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(b) The owner or operator of each unit referred to in paragraph (a) of this section shall notify the Board at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the receipt of the notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from R315-7-18.9(a) if:

(1) The existing unit was constructed in compliance with the design standards of Section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in R315-7-18.9(a) may be waived by the Board for any monofill, if;

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and these wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in R315-2-9(g) with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of R315-7-18.9(a) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of the impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable given the specific site conditions and the nature and extent of contamination. If all contaminated soil is not removed or decontaminated, the owner or operator of the impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR; 144.3; and

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of R315-7-18.9(a) and in good faith compliance with R315-7-18.9(a) and with guidance documents governing liners and leachate collection systems under R315-7-18.9(a), no liner or leachate collection system which is different from that which was so installed pursuant to R315-7-18.9(a) will be required for the unit by the Board when issuing the first permit to the facility, except that the Board will not be precluded from requiring installation of a new liner when the Board has reason to believe that any liner installed pursuant to the requirements of R315-7-18.9(a) is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent overtopping of the dike by overfilling, wave action, or a storm. Except as provided in R315-7-18.2(b), there shall be at least 60 centimeters, two feet, of freeboard.

(g) A freeboard level less than 60 centimeters, two feet, shall be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

(h) Surface impoundments that are newly subject to R315-7-18 due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with R315-7-18.9(a), (c) and (d) not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under R315-13, which incorporates by Reference 40 CFR 268, or the granting of an extension to the effective date of a prohibition pursuant to 40 CFR 268.5, within this 48-month period.

18.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-18.2. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in R315-7-18.10(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-18.10(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-18.10(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

18.11 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of R315-7-27, which incorporates by reference 40 CFR subpart BB, and R315-7-30, which incorporates by reference 40 CFR subpart CC.

R315-7-19. Waste Piles.

19.1 APPLICABILITY

The rules in this section apply to the owners and operators of facilities that treat or store hazardous waste in piles, except as provided otherwise in R315-7-8.1. Alternatively, a pile of hazardous waste may be managed as a landfill under R315-7-21.

19.2 PROTECTION FROM WIND

The owners or operators of a pile containing hazardous waste which could be subject to dispersal by wind shall cover or otherwise manage the pile so that the wind dispersal is controlled.

19.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, owners or operators shall analyze a representative sample from each incoming shipment of waste before adding the waste to any existing pile, unless the only wastes the facility receives which are amenable to piling are compatible with each other, or the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted shall be capable of differentiating between the types of hazardous waste which are placed in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis shall include a visual comparison of color and texture. The results of these analyses shall be placed in the operating record.

19.4 CONTAINMENT

If leachate or run-off from a pile is a hazardous waste, then either:

(a)(1) The pile shall be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(2) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;

(3) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and

(4) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

(b)(1) The pile shall be protected from precipitation and run-on by some other means; and

(2) No liquids or wastes containing free liquids may be placed in the pile.

19.5 SPECIAL REQUIREMENTS FOR IGNITABLE WASTE

Ignitable waste shall not be placed in a pile unless the waste and waste pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of ignitable waste under R315-2-9(d), and complies with R315-7-9.8; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to react.

19.6 REQUIREMENTS FOR REACTIVE WASTE

Reactive waste shall not be placed in a pile unless the waste and pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of reactive waste under R315-2-9(f) and complies with R315-7-9.8; or

(b) The waste is managed in such a way that it is protected from any material or condition which may cause it to react.

19.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTE

(a) Incompatible waste, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same pile unless, R315-7-9.8(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device. The purpose of this is to prevent gaseous emissions, fires, explosions, leaching or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.

(c) Hazardous waste shall not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with R315-7-9.8(b).

19.8 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R315-2-3(d) applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or

decontamination of contaminated components, subsoils, structures, and equipment as required in R315-7-19.8(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills, R315-7-21.4.

19.9 DESIGN AND OPERATING REQUIREMENTS

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with R315-8-12.2(c), unless exempted under R315-8-12.2(d), (e), or (f); and must comply with the procedures of R315-7-18.9(b). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

19.10 ACTION LEAKAGE RATES

(a) The owner or operator of waste pile units subject to R315-7-19.9 shall submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-19.9. Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-19.9. The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under R315-7-19.12, to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period.

19.11 RESPONSE ACTIONS

(a) The owner or operator of waste pile units subject to R315-7-19.9 shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-19.10. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-7-19.11(b).

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-19.11(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-19.11(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

19.12 MONITORING AND INSPECTION

An owner or operator required to have a leak detection system under R315-7-19.9 shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

R315-7-20. Land Treatment.

20.1 APPLICABILITY

The rules in this section apply to owners and operators of hazardous waste land treatment facilities, except as provided otherwise in R315-7-8.1.

20.2 GENERAL OPERATING REQUIREMENTS

(a) Hazardous waste shall not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

(b) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 25-year storm.

(c) The owner or operator shall design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm.

(d) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

20.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, before placing a hazardous waste in or on a land treatment facility, the owner or operator shall:

(a) Determine the concentration in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of 40 CFR 261.24, that cause a waste to

exhibit the Toxicity Characteristic;

(b) For any waste listed in R315-2, determine the concentration of any substances which caused the waste to be listed as a hazardous waste; and

(c) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written documented data that show that the constituent is not present;

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, specifies the substances for which a waste is listed as a hazardous waste. As required by R315-7-9.4, the waste analysis plan shall include analyses needed to comply with R315-7-20.8 and R315-7-20.9. As required by R315-7-12.4, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

20.4 FOOD CHAIN CROPS

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, shall notify the Board. The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under R315-3. Owners or operators of these land treatment facilities who propose to grow food chain crops shall comply with R315-3.

(b)(1) Food chain crops shall not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under R315-7-20.3(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by R315-7-20.4(b)(1) shall be kept at the facility and shall, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(c) Food chain crops shall not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of R315-7-20.4(c)(1)(i) through (iii) or all requirements of R315-7-20.4(c)(2)(i) through (iv) are met.

(1)(i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentration of 2. mg/kg, dry weight, or less.

(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land use for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

TABLE

Time Period	Annual Cd Application Rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (A) or (B) below:

(A)

TABLE

Soil cation exchange capacity (meq/100g)	MAXIMUM CUMULATIVE APPLICATION (kg/ha) Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5-15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

TABLE

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5	5
5 to 15	10
Greater than 15	20

(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measure to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops shall not be grown, except in compliance with R315-7-20.7(c)(2).

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, if an owner or operator grows food chain crops on his land treatment facility, he shall place the information developed in this section in the operating record of the facility.

20.5 UNSATURATED ZONE, ZONE OF AERATION, MONITORING

(a) The owner or operator shall have in writing, and shall implement, an unsaturated zone monitoring plan which is designed to:

(1) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility; and

(2) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall be conducted before or in conjunction with the monitoring required under R315-7-20.5(a)(1).

(b) The unsaturated zone monitoring plan shall include, at a minimum:

(1) Soil monitoring using soil cores; and

(2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with R315-7-20.5(a)(1), the owner or operator shall demonstrate in his unsaturated zone monitoring plan that:

(1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(2) The number of soil and soil-pore water samples to be taken is based on the variability of:

(i) The hazardous waste constituents, as identified in R315-7-20.3(a) and (b), in the waste and in the soil; and

(ii) The soil type(s); and

(3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to groundwater, and soil permeability.

(d) The owner or operator shall keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator shall analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under R315-7-20.3(a) and (b).

All data and information developed by the owner or operator under this section shall be placed in the operating record of the facility.

20.6 RECORDKEEPING

The owner or operator of a land treatment facility shall keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73.

20.7 CLOSURE AND POST-CLOSURE CARE

(a) In the closure and post-closure plan under R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, the owner or operator shall address the following objectives and indicate how they will be achieved:

(1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) Control of the release of contaminated run-off from the facility into surface water;

(3) Control of the release of airborne particulate contaminants caused by wind erosion; and

(4) Compliance with R315-7-20.4 concerning the growth of food-chain crops.

(b) The owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration, e.g., proximity to groundwater, surface water and drinking water sources;

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) Unsaturated zone monitoring information obtained under R315-7-20.5; and

(7) Type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator shall consider at least the following methods in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Removal of contaminated soils;

(2) Placement of a final cover, considering:

(i) Functions of the cover, e.g., infiltration control, erosion and run-off control and wind erosion control; and

(ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

(3) Monitoring of groundwater.

(d) In addition to the requirements of R315-7-14 which incorporates by reference 40 CFR 265.110 - 265.120, during the closure period the owner or operator of a land treatment facility shall:

(1) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) Maintain the run-on control system required under R315-7-20.2(b);

(3) Maintain the run-off management system required under R315-7-20.2(c); and

(4) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, when closure is completed the owner or operator may submit to the Board, certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specification in the approved closure plan.

(f) In addition to the requirement of R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, during the post-closure care period the owner or operator of a land treatment unit shall:

(1) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

(2) Restrict access to the unit as appropriate for its post-closure use;

(3) Ensure that growth of food chain crops complies with R315-7-20.4; and

(4) Control wind dispersal of hazardous waste.

20.8 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) The waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f) and

(2) R315-7-9.8(b) is complied with; or

(b) That waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

20.9 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same land treatment area, unless R315-7-9.8(b) is complied with.

R315-7-21. Landfills.

21.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as R315-7-8.1 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this section.

21.2 DESIGN AND OPERATING REQUIREMENTS

(a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each

lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with R315-8-14.2(d), (e), or (f). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

(b) The owner or operator of each unit referred to in R315-7-21.2(a) shall notify the Executive Secretary at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice shall file a part B application within six months of the receipt of the notice.

(c) The owner or operator of any replacement landfill unit is exempt from R315-7-21.2(a) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in R315-7-21.2(a) may be waived by the Board for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the waste does not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in R315-2-9(g), with EPA Hazardous Waste Number D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituents into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of R315-7-21.2(a) and in good faith compliance with R315-7-21.2(a) and with guidance documents governing liners and leachate collection systems under R315-7-21.2(a), no liner or leachate collection system which is different from that which was so installed pursuant to R315-7-21.2(a) will be required for the unit by the Board when issuing the first permit to the facility, except that the Board will not be precluded from requiring installation of a new liner when the Board has reason to believe that any liner installed pursuant to the requirements of R315-7-21.10(a) is leaking.

(f) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator shall design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind shall cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

As required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the waste analysis plan shall include analysis needed to comply with R315-7-21.5 and R315-7-21.6. As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results of these analyses in the operating record.

21.3 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73:

(a) On a map, the exact location and dimension, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

21.4 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, including maintenance and monitoring throughout the post-closure care period. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events.

(2) Maintain and monitor the leak detection system in accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-7-21.12(b), and comply with all other applicable leak detection system requirements of R315-7;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of R315-7-13;

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(5) Protect and maintain surveyed benchmarks used in complying with R315-7-21.3.

21.5 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-7-21.5(b) and in 7.21.9, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f).

(2) Section R315-7-9.8 is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-7-21.5(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be

covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

21.6 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same landfill cell, unless R315-7-9.8(b) is complied with.

21.7 SPECIAL REQUIREMENTS FOR BULK AND CONTAINERIZED LIQUIDS

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if;

(1) The landfill has a liner and leachate collection and removal system that meets the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid

(i) has been removed by decanting, or other methods,

(ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) had been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-7-21.8 and is disposed of in accordance with R315-7-21.9.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095, Paint Filter Liquids Test as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(e) The date of compliance with R315-7-21.7(a) is November 19, 1981. The date for compliance with R315-7-21.7(c) is March 22, 1982.

(f) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-7-21.7(f)(1); materials that pass one of the tests in R315-7-21.7(f)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers, e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polysobutylene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers. This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria.

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B, CO2 Evolution, Modified Sturm Test.

(g) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Board, or the Board determines that;

(1) The only reasonably available alternative to the placement in the landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water, as that term is defined in 40 CFR 144.3.

21.8 SPECIAL REQUIREMENTS FOR CONTAINERS

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

21.9 DISPOSAL OF SMALL CONTAINERS OF HAZARDOUS WASTE IN OVERPACKED DRUMS, LAB PACKS

Small containers of hazardous waste in overpacked drums, lab packs may be placed in a landfill if the following requirements are met:

(a) Hazardous waste shall be packaged in non-leaking inside containers. The inside containers shall be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations, 49 CFR parts 173, 178, and 179, if those regulations specify particular inside container for the waste.

(b) The inside container shall be overpacked in an open head DOT specification metal shipping container, 49 CFR parts 178 and 179, of no more than 416-liter, 110 gallon, capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with R315-7-21.7(f), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with R315-7-9.8(b).

(d) Incompatible wastes, as defined in R315-1 shall not be placed in the same outside container.

(e) Reactive waste, other than cyanide or sulfide-bearing waste as defined in R315-2-9(f)(v) shall be treated or rendered non-reactive prior to packaging in accordance with R315-7-21.9(a) through (d). Cyanide and sulfide-bearing reactive waste may be packaged in accordance with R315-7-21.9(a) through

(d) without first being treated or rendered non-reactive.

(f) Such disposal is in compliance with the requirements of R315-13, which incorporates by reference 40 CFR 268. Persons who incinerate lab packs according to the requirements in 40 CFR 268.42(c)(1) may use fiber drums in place of metal outer containers. The fiber drums must meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in R315-7-21.9(b).

21.10 ACTION LEAKAGE RATE

(a) The owner or operator of landfill units subject to R315-7-21.2(a) shall submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-21.2(b). Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-21.2(a). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-7-21.12 to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under R315-7-21.12(b).

21.11 RESPONSE ACTIONS

(a) The owner or operator of landfill units subject to R315-7-21.2(a) shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-21.10. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-7-21.11(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-21.11(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-21.11(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

21.12 MONITORING AND INSPECTION

(a) An owner or operator required to have a leak detection system under R315-7-21.2(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with R315-7-21.10(a).

R315-7-22. Incinerators.

22.1 INCINERATORS APPLICABILITY

(a) R315-7-22 applies to owners or operators of facilities that incinerate hazardous waste, except as R315-7-8.1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-7-22.1(b)(2) and (3), the standards of R315-7 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(b), documenting compliance with the requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE: R315-7-22.5 (closure) and the applicable requirements of R315-7-8 through R315-7-15 ,

R315-7-27, and R315-7-30.

(3) R315-7-22.2 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with R315-3-9(b)(1)(i) to minimize emissions of toxic compounds from startup and shutdown.

(c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of R315-7-22, except R315-7-22.5, Closure, provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, and the documentation is retained at the facility, if the waste to be burned is:

(1) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(b), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9, or

(4) A hazardous waste solely because it possesses the reactivity characteristics described by R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii), and will not be burned when other hazardous wastes are present in the combustion zone.

22.2 GENERAL OPERATING REQUIREMENTS

During start-up and shut-down of an incinerator, the owner or operator shall not feed hazardous waste unless the incinerator is at steady state, normal, conditions of operation, including steady state operating temperature and air flow.

22.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state, normal, operating conditions, including waste and auxiliary fuel feed and air flow, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

22.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The complete incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

22.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including but not limited to ash, scrubber waters, and scrubber sludges from the incinerator. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

22.6 INTERIM STATUS INCINERATORS BURNING PARTICULAR HAZARDOUS WASTES

(a) Owners or operators of incinerators subject to R315-7-22 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner of operator will submit an application to the Board containing applicable information in R315-3 demonstrating that the incinerator can meet the performance standards in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the incinerator can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the incinerator.

R315-7-23. Thermal Treatment.

23.1 THERMAL TREATMENT

The rules in this section apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as R315-7-8.1 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of R315-7-22 if the unit is an incinerator, and R315-14-7, which incorporates by reference 40 CFR 266, subpart H, if the unit is a boiler or an industrial furnace as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10.

23.2 GENERAL OPERATING REQUIREMENTS

Before adding hazardous waste, the owner or operator shall bring his thermal treatment process to steady state, normal, conditions of operation--including steady state operating temperature--using auxiliary fuel or other means, unless the process is a non-continuous, batch, thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

23.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously treated in his thermal treatment process to enable him to establish steady state, normal, or in other appropriate, for a non-continuous process, operating conditions, including waste and auxiliary fuel feed, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that

show that the element is not present. The owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

23.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when thermally treating hazardous waste:

(a) Existing instruments which relate to temperature and emission control, if an emission control device is present, shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions shall be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(b) The stack plume, emissions, where present, shall be observed visually at least hourly for normal appearance, color and opacity. The operator shall immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(c) The complete thermal treatment process and associated equipment, pumps, valves, conveyor, pipes, etc., shall be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

23.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash from thermal treatment process or equipment.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

23.6 OPEN BURNING; WASTE EXPLOSIVES

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound, 0.33 kilometers/second at sea level. Owners or operators choosing to open burn or detonate waste explosives shall do so in accordance with the following table and in a manner that does not threaten human health or the environment:

TABLE

Pounds of Waste Explosives or Propellants	Minimum Distance from Open Burning or Detonation to the Property of Others
0 - 100	204 meters (670 feet)
101 - 1,000	380 meters (1,250 feet)
1,001 - 10,000	530 meters (1,730 feet)
10,001 - 30,000	690 meters (2,260 feet)

23.7 INTERIM STATUS THERMAL TREATMENT DEVICES BURNING PARTICULAR HAZARDOUS WASTE

(a) Owners or operators of thermal treatment devices subject to R315-23 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

(1) The owner or operator will submit an application to the Board containing the applicable information in R315-3 demonstrating that the thermal treatment unit can meet the performance standard in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the thermal treatment unit.

R315-7-24. Chemical, Physical, and Biological Treatment.

24.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as R315-7-8.1 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities shall be conducted in accordance with R315-7-17, which incorporates by reference 40 CFR 265.190 - 265.201, R315-7-18, and R315-7-20, respectively.

24.2 GENERAL OPERATING REQUIREMENTS

(a) Chemical, physical, or biological treatment of hazardous waste shall comply with R315-7-9.8(b).

(b) Hazardous wastes or treatment reagents shall not be placed in the treatment process or equipment if they could cause the treatment process to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment shall be equipped with a means to stop this inflow, e.g., a waste feed cut-off system or bypass system to a standby containment device. These systems are intended to be used in the event of a malfunction in the treatment process or equipment.

24.3 WASTE ANALYSIS AND TRIAL TESTS

(a) In addition to the waste analysis required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, whenever:

(1) A hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or

(2) A substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste;

The owner or operator shall, before treating the different waste or using the different process or equipment:

(i) Conduct waste analyses and trial treatment tests, e.g., bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this proposed treatment will meet all applicable requirements of R315-7-24.2(a) and (b).

The owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

24.4 INSPECTIONS

The owner or operator of a treatment facility shall inspect, where present:

(a) Discharge control and safety equipment, e.g., waste feed cut-off systems, bypass systems, drainage systems, and pressure relief systems, at least once each operating day, to ensure that it is in good working order;

(b) Data gathered from monitoring equipment, e.g., pressure and temperature gauges, at least once each operating

day, to ensure that the treatment process or equipment is being operated according to its design.

(c) The construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams, and

(d) The construction materials of, and the area immediately surrounding, discharge confinement structures, e.g., dikes, at least weekly, to detect erosion or obvious signs of leakage, e.g., wet spots or dead vegetation.

24.5 CLOSURE

At closure, all hazardous waste and hazardous waste residues shall be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

24.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Ignitable or reactive waste shall not be placed in a treatment process or equipment unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that;

(i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f), and

(ii) R315-7-9.8(b) is complied with; or

(2) The waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

24.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same treatment process or equipment, unless R315-7-9.8(b) is complied with.

(b) Hazardous waste shall not be placed in unwashed treatment equipment which previously held an incompatible waste or material, unless R315-7-9.8(b) is complied with.

R315-7-25. Underground Injection.

25.1 APPLICABILITY

Except as R315-7-8.1 provides otherwise:

(a) The owner or operator of a facility which disposes of hazardous waste by underground injection is excluded from the requirements of R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120 and R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150.

(b) The requirements of this section apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I under 40 CFR 144.6(a) and which are classified as Class IV under 40 CFR 144.6(d).

R315-7-26. Air Emission Standards for Process Vents.

The requirements of 40 CFR subpart AA sections 265.1030 through 265.1035, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-7-27. Air Emission Standards for Equipment Leaks.

The requirements of 40 CFR subpart BB sections 265.1050 through 265.1064, 2004 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-7-28. Drip Pads.

The requirements of 40 CFR subpart W sections 265.440 through 265.445, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

R315-7-29. Containment Buildings.

The requirements of subpart DD sections 265.1100 through 265.1102, as found in 57 FR 37194, August 18, 1992, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-7-30. Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The requirements as found in 40 CFR subpart CC, sections 265.1080 through 265.1091, 1998 ed., as amended by as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste

January 15, 2010	**19-6-105**
Notice of Continuation August 24, 2006	**19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-8-1. Purpose, Scope and Applicability.

(a) The purpose of R315-8 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in R315-8 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in R315-8 or R315-2.

(c) The requirements of R315-8 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under the Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by R315-3. R315-8 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(d) The requirements of R315-8 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under R315-3.

(e) The requirements of R315-8 do not apply to:

(1) The owner or operator of a state approved facility managing municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-2-5, conditionally exempt small quantity generator exemption;

(2) A generator accumulating waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(3) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(4) The owner or operator of a totally enclosed treatment facility. A totally enclosed treatment facility is a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment;

(5) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(6)(i) Except as provided in R315-8-1(e)(6)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste; and

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by R315-8 shall comply with all applicable requirements of R315-8-3 and R315-8-4.

(iii) Any person who is covered by R315-8-1(e)(6)(i), and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-8 and R315-3 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a State or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in R315-13, which incorporates by reference 40 CFR 268.40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in R315-8-2.8(b);

(8) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with;

(9) The owner or operator of a facility managing recyclable materials described in R315-2-6, which incorporates by reference 40 CFR 261.6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR 266 subpart C, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, R315-14-6, which incorporates by reference 40 CFR 266 subpart G, and R315-14-7, which incorporates by reference 40 CFR 266 subpart H; and

(10) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9), handling the wastes listed below. These handlers are subject to regulation under R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268.

(g) The requirements of R315-8-2 through 8-4 and R315-8-6.12 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, R315-8-2 through 8-4 and R315-8-6.12 do apply to the facility subject to the traditional hazardous waste permit). Instead of the requirements of R315-8-2 through 8-4, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Division of Solid and Hazardous Waste using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation waste to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to R315-13, which incorporates by reference 40 CFR 268, and R315-8, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Executive Secretary that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of R315-8;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of R315-8, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under R315-8-9 through 8-15, and R315-8-16, which incorporates by reference 40 CFR 264.600 - 603, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of R315-8-2.9(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d) at the remediation waste management site, according to the requirements of R315-8-2.10;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in R315-8-1(g)(2) through (g)(6) and R315-8-1(g)(9) through (g)(10); and

(13) Maintain records documenting compliance with R315-8-1(g)(1) through (g)(12).

1.1 RELATIONSHIP TO INTERIM STATUS STANDARDS

A facility owner or operator who has fully complied with the requirements for interim status--as defined in section 3005(e) of the Federal RCRA Act and regulations under R315-3-7.1 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his permit application is made, except as provided under R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553.

R315-8-2. General Facility Standards.

2.1 APPLICABILITY

(a) The rules in this section apply to the owners or operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1(e).

(b) R315-8-2.9(b) applies only to facilities subject to regulation under R315-8-9 through R315-8-15 and R315-8-16, which incorporates by reference 40 CFR 264.600 - 264.603.

2.2 IDENTIFICATION NUMBER

Every facility owner or operator shall obtain an EPA identification number by applying to the Executive Secretary using EPA form 8700-12. Information on obtaining this number can be acquired by contacting the Utah Division of Solid and Hazardous Waste.

2.3 REQUIRED NOTICES

(a)(1) An owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Board in writing at least four weeks in advance of the expected date of arrival of these shipments at the facility. A notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to R315-5-8, which incorporates by reference 40 CFR 262, subpart H, shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document shall be maintained at the facility for at least three years.

(b) An owner or operator of a facility that receives hazardous waste from off-site, except when the owner or operator is also the generator, shall inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. A copy of this written notice shall be retained by the owner or operator as part of the operating record of waste received.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of R315-8 and R315-3. An owner's or operator's failure to notify the new owner or operator of the requirements of R315-8 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

2.4 GENERAL WASTE ANALYSIS

The requirements as found in 40 CFR 264.13, 1996 ed., are adopted and incorporated by reference.

2.5 SECURITY

(a) A facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Board that:

(1) Physical contact with the waste structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of R315-8-2.5.

An owner or operator who wishes to make the demonstration referred to above shall do so with the part B permit application.

(b) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a facility shall have:

(1) A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier, e.g., a fence in good repair or a fence combined with a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry at all times, through gates or other entrances to the active portion of the facility, e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility. The requirements of R315-8-2.5(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of R315-8-2.5(b)(1) or (2).

(c) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a sign with the legend, "Danger - Unauthorized Personnel Keep Out", shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion is potentially dangerous. Owners or operators are encouraged to also describe in the sign the type of hazard, e.g., hazardous waste, flammable wastes, etc. contained within the active portion of the facility. See R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for discussion of security requirements during the post-closure care period.

2.6 GENERAL INSPECTION REQUIREMENTS

(a) Facility owners or operators shall inspect their facilities for malfunctions and deterioration, operator errors, and discharges, which may be causing or may lead to release of hazardous waste constituents to the environment or pose a threat to human health. These inspections shall be conducted frequently enough to identify problems in time to take corrective action before they harm human health or the environment.

(b)(1) Facility owners or operators shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, such as dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The schedule shall be kept at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of the inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when they are in use. At a minimum, the inspection schedule shall include the items and frequencies called for in R315-8-9.5, R315-8-10, which incorporates by reference 40 CFR 264.190 - 264.199, R315-8-11.3, R315-8-12.3, R315-8-13.6, R315-8-14.3, R315-8-15.7, R315-8-16, which incorporates by reference 40 CFR 264.600 - 264.603, R315-8-17, which incorporates by reference 40 CFR 264.1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1083 through 264.1089.

(c) The owner or operator shall make any repairs, or take other remedial action, on a time schedule which ensures that any deterioration or malfunction discovered does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall keep records of inspections in an inspection log or summary. These records shall be retained for at least three years. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs made or remedial actions taken.

2.7 PERSONNEL TRAINING

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section and that includes all the elements described in the document required under R315-8-2.7(d)(3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation relevant to the position in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, but not necessarily limited to, the following, where applicable:

(i) Procedures for inspection, use, repair, and replacement of facility emergency and monitoring equipment;

(ii) Communications or alarm systems;

(iii) Key parameters for automatic waste feed cut-off systems;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel shall successfully complete the program required in R315-8-2.7(a) within six months after the effective date of these rules or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules shall not work in unsupervised positions until they have completed the training requirements of R315-8-2.7(a).

(c) Facility personnel shall take part in an annual review of their initial training in both contingency procedures and the hazardous waste management procedures relevant to the positions in which they are employed.

(d) Owners or operators of facilities shall maintain the following documents and records and make them available upon request:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under R315-8-2.7(d)(1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under R315-8-2.7(d)(1);

(4) Records that document that the training or job experience required under R315-8-2.7(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current employees shall be maintained until closure of the facility; training records on former employees shall be retained for at least three years from the date the employee last worked at the facility. Employee training records may accompany personnel transferred within the same company.

2.8 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTES

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks, static, electrical, or mechanical, spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of R315-8, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, shall take precautions to prevent reactions which:

(1) Generate extreme heat or pressure, fire or explosion, or violent reactions;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility;

(5) Through other like means threaten human health or the environment.

(c) When required to comply with R315-8-2.8, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, date from trial tests, e.g., bench scale or pilot scale tests, waste analyses as specified in R315-8-2.4, which incorporates by reference 40 CFR 264.13, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

2.9 LOCATION STANDARDS

(a) Seismic considerations.

(1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time. For definition of terms used in this section see R315-1. Procedures for demonstrating compliance with this standard in part B of the permit application are specified in R315-3 specifically in R315-3-2.5. Facilities which are located in political jurisdictions other than those listed in R315-50-11 are assumed to be in compliance with this requirement.

(b) Floodplains.

(1) A facility located in a 100-year floodplain shall be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate to the Executive Secretary's satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or

(ii) For existing surface impoundments, waste piles, land treatment units, landfills, and miscellaneous units, no adverse effects on human health or the environment will result if washout occurs, considering:

(A) The volume and physical and chemical characteristics of the waste in the facility;

(B) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(C) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

(D) The impact of hazardous constituents on the sediments of affected surface waters or the soils of the 100-year floodplain that could result from washout. The location where wastes are moved shall be a facility which is either permitted by EPA or has a permit in accordance with R315-3.

(2) As used in R315-8-2.9(b)(1):

(i) "100-year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source;

(ii) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding;

(iii) "100-year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

(c) Salt dome formations, salt bed formations, underground mines and caves.

The placement of any non-containerized or bulk liquid hazardous wastes in any salt dome formation, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

2.10 CONSTRUCTION QUALITY ASSURANCE PROGRAM

(a) CQA program. (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes, flexible membrane liners;

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. The owner or operator of units subject to the CQA program under R315-8-2.10(a) shall develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in R315-8-2.10(a)(2), including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under R315-8-5.3.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in R315-8-2.10(a)(2);

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components, e.g., pipes, according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under R315-8-11.2, R315-8-12.2, and R315-8-14.2.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of R315-8-11.2(c)(1)(i)(B), R315-8-12.2(c)(1)(i)(B), and R315-8-14.2(c)(1)(i)(B) in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The Executive Secretary may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of R315-8-11.2(c)(1)(i)(B), R315-8-12.2(c)(1)(i)(B), and R315-8-14.2(c)(1)(i)(B) in the field.

(d) Certification. Waste shall not be received in a unit subject to R315-8-2.10 until the owner or operator has submitted to the Executive Secretary by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of R315-8-11.2(c) or (d), R315-8-12.2(c) or (d), or R315-8-14.2(c) or (d); and the procedure in R315-3-3.1(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification shall be furnished to the Executive Secretary upon request.

R315-8-3. Preparedness and Prevention.

3.1 APPLICABILITY

The regulations in this section apply to the owners or operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1.

3.2 DESIGN AND OPERATION OF FACILITY

Facilities shall be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water which could threaten the environment or human health.

3.3 REQUIRED EQUIPMENT

All facilities shall be equipped with the following, unless it can be demonstrated to the Board that there are no hazards at the facility which could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility employees;

(b) A device capable of summoning external emergency assistance from local law enforcement agencies, fire departments, or State or local emergency response teams, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio;

(c) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, discharge control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems. This demonstration shall be made with the part B permit application.

3.4 TESTING AND MAINTENANCE OF EQUIPMENT

All facility communications or alarm systems, fire protection equipment, safety equipment, discharge control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

3.5 ACCESS TO COMMUNICATIONS OR ALARM SYSTEM

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all employees involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Board has ruled that this type of a device is not required under R315-8-3.3.

(b) If there is just one employee on the premises while the facility is operating, he shall have immediate access to a device capable of summoning external emergency assistance, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, unless the Board has ruled that this type of a device is not required under R315-8-3.3.

3.6 REQUIRED AISLE SPACE

The facility owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, discharge control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Board that aisle space is not needed for any of these purposes. This demonstration shall be made with the part B permit application.

3.7 ARRANGEMENTS WITH LOCAL AUTHORITIES

(a) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize law enforcement agencies, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

(2) Where more than one law enforcement agency and fire department might respond to an emergency, agreements designating primary emergency authority to a specific law enforcement agency and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into

these arrangements, the owner or operator shall document the refusal in the operating record.

R315-8-4. Contingency Plan and Emergency Procedures.

4.1 APPLICABILITY

The regulations in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1(e).

4.2 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) Each owner or operator shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or discharge of hazardous waste or hazardous waste constituents which could threaten the environment or human health.

4.3 CONTENT OF CONTINGENCY PLAN

(a) The plan shall describe the actions facility personnel shall take to comply with R315-8-4.2 and R315-8-4.7 in response to fires, explosions or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. If a facility owner or operator already has prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions sufficient to comply with the requirements of this section.

(b) The plan shall describe arrangements agreed to by local law enforcement agencies, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to R315-8-3.7.

(c) The plan shall list names, addresses and phone numbers, office and home, of all persons qualified to act as facility emergency coordinator, see R315-8-4.6, and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they assume responsibility as alternates. For new facilities, this information shall be supplied to the Board before operations begin rather than at the time of submission of the plan.

(d) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, discharge control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up-to-date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(e) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by discharges of hazardous waste or fires.

4.4 COPIES OF A CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Made available upon request; and

(c) Submitted to all local law enforcement agencies, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

The contingency plan shall be submitted to the Board with part B of the permit application under R315-3 and after modification or approval will become a condition of any permit issued.

4.5 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed, and immediately amended, if necessary, under any of the following circumstances:

(a) Revisions to the facility permit;

(b) Failure of the plan in an emergency;

(c) Changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for fires, explosions, or discharges of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) Changes in the list of emergency coordinators; or

(e) Changes in the list of emergency equipment.

4.6 EMERGENCY COORDINATOR

At all times there shall be at least one employee either present on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short time period, with the responsibility for coordinating all emergency response measures. This facility emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of manifests and all other records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in R315-8-4.7. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

4.7 EMERGENCY PROCEDURES

(a) Whenever there is an imminent or actual emergency situation, the facility's emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate State or local agencies with designated response roles whenever their assistance is needed.

(b) In the event of a discharge, fire, or explosion, the facility's emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any discharged materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the facility's emergency coordinator shall assess possible hazards to the environment or human health that may result from the discharge, fire, or explosion. This assessment shall consider both direct and indirect effects of the discharge, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off or hazardous groundwater infiltration from water or chemical agents used to control fire and heat-induced explosions.

(d) The facility's emergency coordinator shall immediately report his assessment that the facility has had a discharge, fire, or explosion which could threaten human health, or the environment, outside the facility, as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to assist appropriate officials in making the decision whether local areas should be evacuated; and

(2) He shall immediately notify both the Utah State Department of Environmental Quality as specified in R315-9 and the government official designated as the on-scene coordinator for that geographical area, in the applicable regional contingency plan, or the National Response Center (800/424-

8802). The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, e.g., discharge, fire;

(iv) Name and quantity of material(s) involved, to the extent available;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the facility's emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing discharged waste, and removing or isolating containers.

(f) If the facility stops operations in response to a discharge, fire, or explosion, the facility's emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility. The recovered material shall be handled and managed as a hazardous waste unless it is analyzed and determined not to be, using the procedures specified in R315-2.

(h) The facility's emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The facility owner or operator shall notify the Executive Secretary and other appropriate State and local authorities, that the facility is in compliance with R315-8-4.7(h) before operations are resumed in the affected area(s) of the facility.

(j) The facility owner or operator shall record in the operating record the time, date, and nature of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the emergency to the Executive Secretary. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident, e.g., fire, discharge;

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment or human health, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-8-5. Manifest System, Recordkeeping, and Reporting.

5.1 APPLICABILITY

(a) The rules in R315-8-5 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-8-1. R315-8-5.2, R315-8-5.4, and R315-8-5.7 do not apply to owners and operators of on-site facilities that do not receive hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). R315-8-5.3, which incorporates by reference 40 CFR 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-8-5.1, R315-8-5.2, R315-8-5.4, and R315-8-5.7, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.

5.2 USE OF MANIFEST SYSTEM

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall sign and date the manifes as indicated in R315-8-5.2(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifes, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies in the manifest, as defined in R315-8-5.4(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the signed manifest;

(iv) Within 30 days of the delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a faciity receives hazardous waste imported from a foreign source, the receiving facility shall mail a cop of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-8-5.4(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping papaer (if the manifest has not been received within 30 days after delivery) to the generator; and

Comment: R315-5-2.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated

from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

Comment: The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315 -5-8, which incorporates by reference 40 CFR 262, subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

5.3 OPERATING RECORD

The requirements as found in 40 CFR 264.73, 2000 ed., are adopted and incorporated by reference.

5.4 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are:

(1) Significant differences (as defined by R315-8-5.4(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload; for bulk waste, variations greater than 10 percent in weight. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Executive Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-8-5.4, it must ensure that either the delivering transporter retains custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-8-5.4(e) or (f).

(e) Except as provided in R315-8-5.4(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of R315.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-8-5.4(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(f)(1), (2), (3), (4), (5), and (6).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set for in R315-2-7(b) after it has signed, date, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

5.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) Records of waste disposal locations and quantities required to be maintained under R315-8-5.3, which incorporates by reference 40 CFR 264.73(b)(2) shall be submitted to the Board and local land authority upon closure of the facility.

(b) The retention period for all records required under this section is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Executive Secretary.

(c) All records, including plans, required under R315-8 shall be furnished upon request, and made available at all reasonable times for inspection.

5.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of an biennial report to the Board by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given in the report;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste; and

(f) The most recent closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264. 140 - 264.151, and for disposal facilities, the most recent post-closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151; and

(g) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984;

(i) The certification signed by the owner or operator of the facility or his authorized representative.

5.7 UNMANIFESTED WASTE REPORT

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e)(2), and if the waste is not excluded from the manifest requirement of R315, then the owner or operator shall prepare and submit a letter to the Executive Secretary within 15 days of the receipt of the waste. The unmanifested waste report shall include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date of receipt of the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

5.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-8-5.6 and R315-8, a facility owner operator shall also report the following to the Board:

(a) Discharges, fires, and explosions as specified in R315-8-4.7(j);

(b) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-8;

(c) Facility closure as specified in R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120; and

(d) As otherwise required in R315-8-6, R315-8-11, R315-8-12, R315-8-13, R315-8-14, R315-8-17, which incorporates by reference 40 CFR 264-1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1080 - 264.1090.

R315-8-6. Groundwater Protection.

6.1 APPLICABILITY

(a)(1) Except as provided in R315-8-6.1(b), R315-8-6 applies to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator shall satisfy the requirements identified in R315-8-6.1(a)(2) for all wastes, or constituents thereof, contained in solid waste management units at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units shall comply with the requirements in R315-8-6.12. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982, hereinafter referred to as a "regulated unit", shall comply with the requirements of R315-8-6.2 through R315-8-6.11 in lieu of R315-8-6.12 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of R315-8-6.12 apply to regulated units.

(3) Groundwater monitoring shall be required at non-land disposal facilities as determined to be necessary and appropriate by the Executive Secretary.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer

under R315-8-6 if:

(1) The owner or operator is exempted under R315-8-1(e) or

(2) He operates a unit which the Board finds:

(i) Is an engineered structure.

(ii) Does not receive or contain liquid waste or waste containing free liquid.

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off.

(iv) Has both inner and outer layers of containment enclosing the waste.

(v) Has a leak detection system built into each containment layer.

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Board finds pursuant to R315-8-13.11(d) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of R315-8-13.9 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Board finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit, including the closure period and the post-closure care period specified under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a waste pile in compliance with R315-8-12.1(c).

(c) The regulations under this section apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in this section:

(1) Do not apply if the waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264-120, if the owner or operator is conducting a detection monitoring program under R315-8-6.9;

(3) Apply during the compliance period under R315-8-6.7 the owner is conducting a compliance monitoring program under R315-8-6.10 or a corrective action program under R315-8-6.11.

(d) Requirements in this section may apply to miscellaneous units when necessary to comply with R315-8-24, which incorporates by reference 40 CFR 264.601 - 264.603.

(e) The regulations of R315-8-6 apply to all owners and operators subject to the requirements of R315-3-1.1(e)(7), when the Executive Secretary issues either a post-closure permit or an enforceable document, as defined in R315-3-1.1(e)(7), at the facility. When the Executive Secretary issues an enforceable document, references in R315-8-6 to "in the permit" mean "in the enforceable document."

(f) The Executive Secretary may replace all or part of the requirements of R315-8-6.2 through R315-8-6.11 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit, or in an enforceable document, as defined in R315-3-1.1(e)(7) where the Executive Secretary determines that:

(1) The regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of R315-8-6.2 through R315-8-6.11 because alternative requirements will protect human health and the environment.

6.2 REQUIRED PROGRAMS

(a) Owners and operators subject to this section shall conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under R315-8-6.4, from a regulated unit are detected at the compliance point under R315-8-6.6, the owner or operator shall institute a compliance monitoring program under R315-8-6.10. Detected is defined as statistically significant evidence of contamination as described in R315-8-6.9(f);

(2) Whenever the groundwater protection standard under R315-8-6.3, is exceeded, the owner or operator shall institute a corrective action program under R315-8-6.11. "Exceeded" is defined as statistically significant evidence of increased contamination as described in R315-8-6.10(d);

(3) Whenever hazardous constituents under R315-8-6.4, from a regulated unit exceed concentration limits under R315-8-6.5 in groundwater between the compliance point under R315-8-6.6 and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under R315-8-6.11; or

(4) In all other cases, the owner or operator shall institute a detection monitoring program under R315-8-6.9.

(b) The Executive Secretary will specify in the facility permit the specific elements of the monitoring and response program. The Executive Secretary may include one or more of the programs identified in R315-8-6.2(a) in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Executive Secretary will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate this type of a program could be taken.

6.3 GROUNDWATER PROTECTION STANDARD

The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under R315-8-6.4 that are detected in the groundwater from a regulated unit do not exceed the concentration limits under R315-8-6.5 in the uppermost aquifer underlaying the waste management area beyond the point of compliance under R315-8-6.6 during the compliance period under R315-8-6.7. The Executive Secretary will establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater.

6.4 HAZARDOUS CONSTITUENTS

(a) The Executive Secretary will specify in the facility permit the hazardous constituents to which the groundwater protection standard of R315-8-6.3 applies. Hazardous constituents are constituents identified in R315-50-10, which

incorporates by reference 40 CFR 261, Appendix VIII, that have been detected in groundwater in the uppermost aquifer underlaying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Executive Secretary has excluded them under paragraph 8.6.4(b).

(b) The Executive Secretary will exclude an R315-50-10 constituent from the list of hazardous constituents specified in the facility permit if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Executive Secretary will consider the following:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.4(b) about the use of groundwater in the area around the facility, the Executive Secretary will consider any identification of underground sources of drinking water.

6.5 CONCENTRATION LIMITS

(a) The Executive Secretary will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under R315-8-6.4. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(2) For any of the constituents listed in Table 1, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

TABLE 1
Maximum Concentration of Constituents for Groundwater Protection

CONSTITUENT		MAXIMUM CONCENTRATION(1)
Arsenic		0.05
Barium		1.0
Cadmium		0.01
Chromium		0.05
Lead		0.05
Mercury		0.002
Selenium		0.01
Silver		0.05
Endrin	(1,2,3,4,10,10-hexachloro-1, 7-epoxy-1,4,4a,5,6,7,8, 9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane	(1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor	(1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene	(C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D	(2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex	(2,4,5-Trichlorophenoxypropionic acid)	0.01

(1)Milligrams per liter

(3) Shall not exceed an alternate limit established by the Executive Secretary under R315-8-6.5(b).

(b) The Executive Secretary will establish an alternate concentration limit for a hazardous constituent if they find that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Executive Secretary will consider the following factors:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential

adverse effects; and

(2) Potential adverse effects on hydraulically connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater, and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.5(b) about the use of groundwater in the area around the facility the Board will consider any identification of underground sources of drinking water.

6.6 POINT OF COMPLIANCE

(a) The Executive Secretary will specify in the facility permit the point of compliance at which the groundwater protection standard of R315-8-6.3 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlaying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

6.7 COMPLIANCE PERIOD

(a) The Executive Secretary will specify in the facility permit the compliance period during which the groundwater protection standard of R315-8-6.3 applies. The compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to permit and the closure period.

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of R315-8-6.9.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in R315-8-6.7(a), the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

6.8 GENERAL GROUNDWATER MONITORING REQUIREMENTS

The owner or operator shall comply with the following requirements for any groundwater monitoring program developed to satisfy R315-8-6.9, R315-8-6.10, or R315-8-6.11:

(a) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background water that has not been affected by leakage from a regulated unit;

(i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(2) represent the quality of groundwater passing the point of compliance; and

(3) allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the bore hole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(d) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(e) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size should be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the Executive Secretary. This sampling procedure should be:

(1) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(2) an alternate sampling procedure proposed by the owner

or operator and approved by the Executive Secretary.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent, upon approval by the Executive Secretary, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits, pql's, are used in any of the following statistical procedures to comply with R315-8-6.8(i)(5), the pql shall be proposed by the owner or operator and approved by the Executive Secretary. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in R315-8-6.8(i).

(1) a parametric analysis of variance, ANOVA, followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) an analysis of variance, ANOVA, based on ranks followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between compliance well's median and the background median levels for each constituent;

(3) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(4) a control chart approach that gives control limits for each constituent;

(5) another statistical test method submitted by the owner or operator and approved by the Executive Secretary.

(i) Any statistical method chosen under R315-8-6.8(h) for specification in the unit permit shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, predictions intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Executive Secretary if he finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and approved by the Executive Secretary if he finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit, pql, approved by the Executive Secretary under R315-8-6.8(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with R315-8-6.8(g) including actual levels of constituents shall be maintained in the facility operating record. The Executive Secretary will specify in the permit when the data shall be submitted for review.

6.9 DETECTION MONITORING PROGRAM

An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor for indicator parameters, e.g., specific conductance, pH, total organic carbon, or total organic halogen, waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Executive Secretary will specify the parameters or constituents to be monitored in the facility permit after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b), and (c).

(c) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to R315-8-6.9(a) in accordance with R315-8-6.9(g). The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under R315-8-6.8(h).

(d) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under R315-8-6.9(a) in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semiannually during detection monitoring.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to R315-8-6.9(a) at a frequency specified under

R315-8-6.9(d).

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method specified in the permit under R315-8-6.8(h). This method shall compare data collected at the compliance point to the background groundwater quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The Executive Secretary will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to R315-8-6.9(f) that there is statistically significant evidence of contamination for chemical parameters of hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he shall:

(1) notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, are present, and if so, in what concentration;

(3) for any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, compounds found in the analysis pursuant to R315-8-6.9(g)(2), the owner or operator may resample within one month and repeat the analysis for these compounds detected. If the results for the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to R315-8-6.9(g)(2), the hazardous constituents found during this initial R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis will form the basis for compliance monitoring;

(4) within 90 days, submit to the Executive Secretary an application for a permit modification to establish a compliance monitoring program meeting the requirements of R315-8-6.10. The application shall include the following information;

(i) an identification of the concentration of any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of R315-8-6.10;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of R315-8-6.10;

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under R315-8-6.10(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under R315-8-6.5(b); and

(5) within 180 days, submit to the Executive Secretary:

(i) all data necessary to justify an alternate concentration limit sought under R315-8-6.5(b); and

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirement of R315-8-6.11, unless:

(A) all hazardous constituents identified under R315-8-6.9(g)(2) are listed in R315-8-6.5, Table 1 and their concentrations do not exceed their respective values given in that table; or

(B) the owner or operator has sought an alternate concentration limit under R315-8-6.5(b) for every hazardous constituent identified under R315-8-6.9(g)(2).

(6) If the owner or operator determines, pursuant to R315-8-6.9(f), that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under R315-8-6.9(g)(6) in addition to, or in lieu of, submitting a permit modification application under R315-8-6.9(g)(4); however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in R315-8-6.9(g)(4) unless the demonstration made under R315-8-6.9(g)(6) successfully shows that a source other than the regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under R315-8-6.9(g)(6), the owner or operator shall:

(i) notify the Executive Secretary in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under R315-8-6.9.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6.10 COMPLIANCE MONITORING PROGRAM

An owner or operator required to establish a compliance monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility permit including:

(1) A list of the hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6;

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b) and (c).

(c) The Executive Secretary will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with R315-8-6.8(g) and (h).

(1) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous waste constituent in accordance with R315-8-6.8(g).

(2) The owner or operator shall record groundwater analytical data as measured and in form necessary for the determination of statistical significance under R315-8-6.8(h) for

the compliance period of the facility.

(d) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to R315-8-6.10(a), at a frequency specified under R315-8-6.10(f).

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method specified in the permit under R315-8-6.5. The method shall compare data collected at the compliance point to a concentration limit developed in accordance with R315-8-6.8(h).

(2) The owner or operator shall determine whether there is statistically significant evidence of increase contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with R315-8-6.8(g).

(g) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in R315-50-14, which incorporates by reference 40 CFR, Appendix IX, at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in R315-8-6.9(f). If the owner or operator finds R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Executive Secretary within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he shall report the concentrations of these additional constituents to the Executive Secretary within seven days after completion of the initial analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to R315-8-6.10(d) that any concentration limits under R315-8-6.5 are being exceeded at any monitoring well at the point of compliance he shall:

(1) Notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate which concentration limits have been exceeded;

(2) Submit to the Executive Secretary an application for a permit modification to establish a corrective action program meeting the requirements of R315-8-6.11, within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Executive Secretary under R315-8-6.9(h)(5). The application shall at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under R315-8-6.10(a); and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. The groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to R315-8-6.10(d), that the groundwater concentration limits under R315-8-6.10 are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under R315-8-6.10(i), the owner or operator shall:

(1) Notify the Executive Secretary in writing within seven days that he intends to make a demonstration under R315-8-6.10(i);

(2) Within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6.11 CORRECTIVE ACTION PROGRAM

An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility permit, including:

(1) A list of hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6; and

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Executive Secretary will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and the requirement will operate in lieu of R315-8-6.10(i)(2).

(d) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. The monitoring program may be based on the requirements for a compliance monitoring program under R315-8-6.10 and shall be as effective as that program in determining compliance with the groundwater protection standard under R315-8-6.3 and in determining the success of a corrective action program under R315-8-6.11(e), where appropriate.

(e) In addition to the other requirements of this section, the

owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under R315-8-6.4 that exceed concentration limits under R315-8-6.5 in groundwater:

(1) between the compliance point under R315-8-6.6 and the downgradient facility property boundary; and

(2) beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis.

(3) Corrective action measures under R315-8-6.11(e) shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under R315-8-6.4 is reduced to levels below their respective concentration limits under R315-8-6.5.

(f) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area, including the closure period if he can demonstrate, based on data from the groundwater monitoring program under R315-8-6.11(d), that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

(g) The owner or operator shall report in writing to the Executive Secretary on the effectiveness of the corrective action program. The owner or operator shall submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a permit modification to the program.

6.12 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the permit in accordance with R315-8-6-12 and R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553. The permit will contain schedules of compliance for the corrective action, where such corrective action cannot be completed prior to issuance of the permit, and assurances of financial responsibility for completing the corrective action.

(c) The owner or operator shall implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis. Assurances of financial responsibility for corrective action shall be provided.

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

R315-8-7. Closure and Post Closure.

The requirements as found in 40 CFR subpart G, 264.110 - 264.120, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(a) substitute "Executive Secretary" for all references made to "Regional Administrator".

(b) substitute R315-3 for all general reference made to 40 CFR 124 and 270.

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references made to the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-8. Financial Requirements.

The requirements as found in 40 CFR subpart H, 264.140 - 264.151, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(a) substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator".

(b) substitute "Board" for all references to "Agency" or "EPA."

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references to the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-9. Use and Management of Containers.

9.1 APPLICABILITY

The rules in this section apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as provided otherwise in R315-8-1.

Under R315-2-7 and R315-2-11, if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is "empty" as defined in R315-2-7. In that event, management of the container is exempt from the requirements of this section.

9.2 CONDITION OF CONTAINERS

If a container holding hazardous waste is not in good condition, e.g., severe rusting, apparent structural defects, or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this section.

9.3 COMPATIBILITY OF WASTE WITH CONTAINERS

The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

9.4 MANAGEMENT OF CONTAINERS

(a) A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.

9.5 INSPECTIONS

At least weekly, the owner or operator shall inspect areas

where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. See R315-8-2.6(c) and R315-8-9.2 for remedial action required if deterioration or leaks are detected.

9.6 CONTAINMENT

(a) Container storage areas shall have a containment system that is designed and operated in accordance with R315-8-9.6(b), except as otherwise provided by R315-8-9.6(c).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system shall have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in R315-8-9.6(b)(3) to contain any run-on which might enter the system; and

(5) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

If the collected material is a hazardous waste under R315-2, it shall be managed as a hazardous waste in accordance with all applicable requirements of these rules. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of section 402 of the Clean Water Act, as amended.

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by R315-8-9.6(b), except as provided by R315-8-9.6(d) or provided that:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) Storage areas that store containers holding the wastes listed below that do not contain free liquids shall have a containment system defined by R315-8-9.6(b):

(1) F020, F021, F022, F023, F026, and F027.

9.7 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Containers holding ignitable or reactive waste shall be located at least 15 meters, 50 feet, from the facility's property line. See R315-8-2.8(a) for additional requirements.

9.8 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, shall not be placed in the same container, unless R315-8-2.8(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material. As required by R315-8-2.4, which incorporates by reference 40 CFR 264.13, the waste analysis plan shall include analyses needed to comply with R315-8-9.8(b). Also R315-8-2.8(c) requires waste analyses, trial tests or other documentation to assure compliance with R315-8-2.8(b). As required by R315-8-5.3, which incorporates by reference 40 CFR 264.73, the owner or operator shall place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. The purpose of this section is to prevent fires, explosions, gaseous emission, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.

9.9 CLOSURE

At closure, all hazardous waste and hazardous waste residues shall be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed.

At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with R315-2-3(d) that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

9.10 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of R315-8-17, which incorporates by reference 40 CFR subpart AA, R315-8-18, which incorporates by reference 40 CFR subpart BB, and R315-8-22, which incorporates by reference 40 CFR subpart CC.

R315-8-10. Tanks.

The requirements as found in 40 CFR 264, subpart J, 264.190 - 264.200, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator" found in subpart J except paragraph 264.193(g) which should have "Regional Administrator" replaced by "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, 1988 for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988 for non-HSWA existing tank systems; but if the age of the facility is greater than seven years, secondary containment shall be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988 for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR

265-193(a)(5), "or December 16, 1988 for non-HSWA tank systems."

R315-8-11. Surface Impoundments.

11.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as provided otherwise in R315-8-1.

11.2 DESIGN AND OPERATING REQUIREMENTS

(a) Any surface impoundment that is not covered by R315-8-11.2(f) or R315-7-18.9 shall have a liner for all portions of the impoundment, except for existing portions of such impoundments. The liner shall be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or groundwater or surface water, during the active life of the facility, provided that the impoundment is closed in accordance with R315-8-11.5(a)(1). For impoundments that will be closed in accordance with R315-8-11.5(a)(2), the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner shall be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of R315-8-11.2(a) if the Executive Secretary finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Executive Secretary will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7}/cm/sec.

(ii) The liners shall comply with R315-8-11.2(a)(1)-(3).

(2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1}/cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4}/m^2sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-11.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in R315-8-11.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in R315-8-11.2(f) may be waived by the Executive Secretary for any monofill, if:

(1) The monofill contains only hazardous wastes from

foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics, and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of R315-8-11.2(c) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of the impoundment, the owner or operator shall remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable given the specific site conditions and the nature and extent of contamination. If all contaminated soil is not removed or decontaminated, the owner or operator of the impoundment will comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action:

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with a permit; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from R315-8-11.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment shall have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure to the dikes. In ensuring structural integrity, it shall not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

11.3 MONITORING AND INSPECTION

(a) During construction and installation, liners, except in the case of existing portions of surface impoundments exempt from R315-8-11.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of overtopping control systems;

(2) Sudden drops in the level of the impoundment's contents; and

(3) Severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit and after any extended period of time, at least six months, during which the impoundment was not in service, the owner or operator shall obtain a certification from a qualified engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification shall establish, in particular, that the dike:

(1) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(2) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(d)(1) An owner or operator required to have a leak detection system under R315-8-11.2(c) or (d) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

11.4 EMERGENCY REPAIRS; CONTINGENCY PLANS

(a) A surface impoundment shall be removed from service in accordance with R315-8-11.4(b) when:

(1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(2) The dike leaks.

(b) When a surface impoundment shall be removed from service as required by R315-8-11.4(a), the owner or operator shall:

(1) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(2) Immediately contain any surface leakage which has occurred or is occurring;

(3) Immediately stop the leak;

(4) Take any necessary steps to stop or prevent catastrophic failure;

(5) If a leak cannot be stopped by any other means, empty the impoundment; and

(6) Notify the Executive Secretary of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in R315-8-4,

the owner or operator shall specify a procedure for complying with the requirements of R315-8-11.4(b).

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity shall be recertified in accordance with R315-8-11.3(c).

(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

(i) For any existing portion of the impoundment, a liner shall be installed in compliance with R315-8-11.2(a), and

(ii) For any other portion of the impoundment, the repaired liner system shall be certified by a qualified engineer as meeting the design specifications approved in the permit.

(e) A surface impoundment that has been removed from service in accordance with the requirements in this section and that is not being repaired shall be closed in accordance with the provisions of R315-8-11.5.

11.5 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall:

(1) Remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous wastes unless R315-2-3(d) applies; or

(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the final cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator shall comply with all post-closure requirements contained in R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, including maintenance and monitoring throughout the post-closure care period, specified in the permit under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the leak detection system in accordance with R315-8-11.2(c)(2)(iv) and (3) and R315-8-11.3(d), and comply with all other applicable leak detection system requirements of this part;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of R315-8-6; and

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c)(1) If an owner or operator plans to close a surface impoundment in accordance with R315-8-11.5(a)(1), and the impoundment does not comply with the liner requirements of R315-8-11.2(a) and is not exempt from them in accordance with R315-8-11.2(b), then:

(i) The closure plan for the impoundment under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, shall include both a plan for complying with R315-8-11.5(a)(1) and a contingent plan for complying with R315-8-11.5(a)(2) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) The owner or operator shall prepare a contingent post-closure plan under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for complying with R315-8-11.5(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151, for closure and post-closure care of an impoundment subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under R315-8-11.5(a)(1).

11.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a surface impoundment unless the waste and impoundment satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, R315-50-12, which incorporates by reference 40 CFR 268 Appendix I, and R315-50-13, which incorporates by reference 40 CFR 268 Appendix II, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f), and

(2) R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

11.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, shall not be placed in the same surface impoundment, unless R315-8-2.8(b) is complied with.

11.8 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Executive Secretary may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

11.9 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action

leakage rate for surface impoundment units subject to R315-8-11.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-8-11.3(d) to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit is closed in accordance with R315-8-11.5(b), monthly during the post-closure care period when monthly monitoring is required under R315-8-11.3(d).

11.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-8-11.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-11.10(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-11.10(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and remediation determinations in R315-8-11.10(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

11.11 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of R315-8-18, which incorporates by reference 40 CFR subpart BB, and R315-8-22, which incorporates by reference 40 CFR subpart CC.

R315-8-12. Waste Piles.

12.1 APPLICABILITY

(a) The rules in this section apply to owners and operators of facilities that store or treat hazardous waste in piles, except as provided otherwise in R315-8-1.

(b) The rules in this section do not apply to owners or operators of waste piles that are closed with wastes left in place. These waste piles are subject to the rules under R315-8-14, Landfills.

(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to regulation under R315-8-12.2 or R315-8-6, provided that:

(1) Liquids or materials containing free liquids are not placed in the pile;

(2) The pile is protected from surface water run-on or groundwater run-on by the structure or in some other manner;

(3) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

(4) The pile will not generate leachate through decomposition or other reactions.

12.2 DESIGN AND OPERATING REQUIREMENTS

(a) A waste pile, except for an existing portion of a waste pile, shall have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself, but not into the adjacent subsurface soil or groundwater or surface water, during the active life of the facility. The liner shall be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(ii) Designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the

requirements of R315-8-12.2(a) if the Executive Secretary finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Executive Secretary will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10 under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-12.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-12.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more:

(iii) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-12.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in R315-8-12.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) R315-8-12.2(c) does not apply to monofills that are granted a waiver by the Executive Secretary in accordance with R315-8-11.2(h).

(f) The owner or operator of any replacement waste pile unit is exempt from R315-8-12.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(h) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the pile to control wind dispersal.

(k) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

12.3 MONITORING AND INSPECTION

(a) During construction or installation, liners, except in the case of existing portions of piles exempt from R315-8-12.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure

tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) Proper functioning of wind dispersal control systems, where present; and

(3) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under R315-8-12.2(c) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

12.4 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a waste pile unless the waste and waste pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, R315-50-12, which incorporates by reference 40 CFR 268 Appendix I, and R315-50-13, which incorporates by reference 40 CFR 268 Appendix II, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the pile so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or condition which may cause it to ignite or react.

12.5 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials shall not be placed in the same pile, unless R315-8-2.8(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in containers, other piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste shall not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with R315-8-2.8(b).

12.6 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system compoundments, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R315-2-3(d) applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in R315-8-12.6(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120.

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of R315-8-12.2(a)(1), and is not exempt from them in accordance with R315-8-12.1(c) or R315-8-12.2(b) shall:

(i) Include in the closure plan for the pile under R315-8-7.3 both a plan for complying with R315-8-12.6(a) and a contingent plan for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151, for closure and post-closure care of a pile subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under R315-8-12.6(a).

12.7 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026 and F027 shall not be placed in waste piles that are not enclosed, as defined in R315-8-12.1(c), unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials:

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Executive Secretary may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

12.8 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-8-12.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under R315-8-12.3(c), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period.

12.9 RESPONSE ACTIONS

(a) The owner or operator of waste pile units subject to R315-8-12.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been

exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-12.9(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-12.9(b)(3), (4), and (5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-8-12.9(b)(3), (4), and (5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-8-13. Land Treatment.

13.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as provided otherwise in R315-8-1.

13.2 TREATMENT PROGRAM

(a) An owner or operator subject to this section shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The Executive Secretary will specify in the facility permit the elements of the treatment program, including:

(1) The wastes that are capable of being treated at the unit based on demonstration under R315-8-13.3;

(2) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with R315-8-13.4(a); and

(3) Unsaturated zone monitoring provisions meeting the requirements of R315-8-13.6.

(b) The Executive Secretary will specify in the facility permit the hazardous constituents that shall be degraded, transformed, or immobilized under this section. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(c) The Executive Secretary will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone shall be:

(1) No more than 1.5 meters, five feet, from the initial soil surface; and

(2) More than 1 meter, three feet, above the seasonal high water table.

13.3 TREATMENT DEMONSTRATION

(a) For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under R315-8-13.3(a), he shall obtain a treatment or disposal permit under R315-3-6.4. The Executive Secretary will specify in this plan the testing, analytical, design, and operating requirements, including the duration of the tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities necessary to meet the requirements in R315-8-13.3(c).

(c) Any field test or laboratory analysis conducted in order to make a demonstration under R315-8-13.3(a) shall:

(1) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(i) The characteristics of the waste, including the presence of R315-50-10 constituents, which incorporates by reference 40 CFR 261, Appendix VIII;

(ii) The climate in the area;

(iii) The topography of the surrounding area;

(iv) The characteristics of the soil in the treatment zone, including depth; and

(v) The operating practices to be used at the unit.

(2) Be able to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

(3) Be conducted in a manner that protects human health and the environment considering;

(i) The characteristics of the waste to be tested;

(ii) The operating and monitoring measures taken during the course of the test;

(iii) The duration of the test;

(iv) The volume of the waste used in the test;

(v) In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

13.4 DESIGN AND OPERATING REQUIREMENTS

The Executive Secretary will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(a) The owner or operator shall design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator shall design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under R315-8-13.3. At a minimum, the Executive Secretary will specify the following in the facility plan:

(1) The rate and method of waste application to the treatment zone;

(2) Measures to control soil pH;

(3) Measures to enhance microbial or chemical reactions, e.g., fertilization, tilling; and

(4) Measures to control the moisture content of the treatment zone.

(b) The owner or operator shall design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(c) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year storm.

(d) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

(g) The owner or operator shall inspect the unit weekly and after storms to detect evidence of:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) Improper functioning of wind dispersal control measures.

13.5 FOOD-CHAIN CROPS

The Executive Secretary may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Executive Secretary will specify in the facility plan the specific food-chain crops which may be grown.

(a)(1) The owner or operator shall demonstrate that there is no substantial risk to human health caused by the growth of the crops in or on the treatment zone by demonstrating, prior to the planting of the crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator shall make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and shall:

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics, e.g., pH, cation exchange capacity, specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he shall obtain a permit for conducting these activities.

(b) The owner or operator shall comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture shall be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of two mg/kg, dry weight, or less;

(ii) The annual application of cadmium from waste shall not exceed 0.5 kilograms per hectare, kg/ha, on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, and annual cadmium application rate shall not exceed:

TABLE

Time Period	Annual Cd Application Rate (kilograms per hectare)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste shall not exceed five kg/ha if the waste and soil mixture has a pH less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste shall not exceed: five kg/ha if soil cation exchange capacity (CEC) is less than five meq/100g; 10 kg/ha if soil CEC is 5-15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

(2)(i) Animal feed shall be the only food-chain crop produced;

(ii) The pH of the waste and soil mixture shall be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level shall be maintained whenever food-chain crops are grown;

(iii) There shall be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan shall describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food-chain, which may result from alternative land uses; and

(iv) Future property owners shall be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food-chain crops shall not be grown except in compliance with R315-8-13.5(b)(2).

13.6 UNSATURATED ZONE MONITORING

An owner or operator subject to this section shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator shall monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The Executive Secretary will specify the hazardous constituents to be monitored in the facility plan. The hazardous constituents to be monitored are those specified under R315-8-13.2(b).

(2) The Executive Secretary may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under R315-8-13.2(b). PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The Board will establish PHCs if they find, based on the waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment to at least equivalent levels for the other hazardous constituents in the waste.

(b) The owner or operator shall install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system shall consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that;

(1) Represent the quality of background soil-pore liquid and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

(c) The owner or operator shall establish a background value for each hazardous constituent to be monitored under R315-8-13.6(a). The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil-pore liquid values shall be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator shall express all background values in a form necessary for the determination of statistically significant increases under R315-8-13.6(f).

(4) In taking samples used in the determination of all background values, the owner or operator shall use an unsaturated zone monitoring system that complies with R315-8-13.6(b)(1).

(d) The owner or operator shall conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Executive Secretary will specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator shall express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under R315-8-13.6(f).

(e) The owner or operator shall use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator shall implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(f) The owner or operator shall determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under R315-8-13.6(a) below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under R315-8-13.6(d).

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent, as determined under R315-8-13.6(d), to the background value for that constituent according to the statistical procedure specified in the facility plan under this paragraph.

(2) The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility plan after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

(3) The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Executive Secretary will specify a statistical procedure in the facility plan that he finds:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) If the owner or operator determines, pursuant to R315-8-13.6(f), that there is a statistically significant increase of hazardous constituents below the treatment zone he shall:

(1) Notify the Board of this finding in writing within seven days. The notification shall indicate what constituents have shown statistically significant increases.

(2) Within 90 days, submit to the Executive Secretary an application for permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(h) If the owner or operator determines, pursuant to R315-8-13.6(f), that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under R315-8-13.6(g)(2), he is not relieved of the requirement to submit a plan modification application within the time specified in R315-8-13.6(g)(2) unless the demonstration made under this paragraph successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

(1) Notify the Board or its duly authorized representative in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this paragraph;

(2) Within 90 days, submit a report to the Board demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

13.7 RECORDKEEPING

The owner or operator shall include hazardous waste application dates, rates, and amounts in the operating record required under R315-8-5.3, which incorporates by reference 40 CFR 264.73.

13.8 CLOSURE AND POST-CLOSURE CARE

(a) During the closure period the owner or operator shall:

(1) Continue all operations, including pH control, necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under R315-8-13.4(a), except to the extent such measures are inconsistent with R315-8-13.8(a)(8);

(2) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under R315-8-13.4(b);

(3) Maintain the run-on control system required under R315-8-13.4(c);

(4) Maintain the run-off management system required under R315-8-13.4(d);

(5) Control wind dispersal of hazardous waste if required under R315-8-13.4(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under R315-8-13.5;

(7) Continue unsaturated zone monitoring in compliance with R315-8-13.6 except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) Establish a vegetative cover on the portion of the facility being closed at a time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover shall be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, when closure is completed the owner or operator may submit to the Board certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period the owner or operator shall:

(1) Continue all operations, including pH control necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that these measures are consistent with other post-closure care activities;

(2) Maintain a vegetative cover over closed portions of the facility;

(3) Maintain the run-on control system required under R315-8-13.4(c);

(4) Maintain the run-off management system required under R315-8-13.4(d);

(5) Control wind dispersal of hazardous waste if required under R315-8-13.4(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under R315-8-13.5; and

(7) Continue unsaturated zone monitoring in compliance with R315-8-13.6, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under R315-8-13.8(a)(8) and (c) if the Board finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in R315-8-13.8(d)(3). The owner or operator may submit such a demonstration to the Board at any time during the closure or post-closure care periods. For the purposes of this paragraph:

(1) The owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility plan under R315-8-13.2(b).

(i) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(ii) The owner or operator shall express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under R315-8-13.8(d)(3).

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator shall take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under section R315-8-6 if the Board finds that the owner or operator satisfies R315-8-13.8(d) and if unsaturated zone monitoring under R315-8-13.6 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

13.9 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268, and:

(a) The waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) Section R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or conditions which may cause it to ignite or react.

13.10 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

The owner or operator shall not place incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, in or on the same treatment zone, unless R315-8-2.8(b) is complied with.

13.11 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Board may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous waste F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

R315-8-14. Landfills.

14.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as R315-8-1 provides otherwise.

14.2 DESIGN AND OPERATING REQUIREMENTS

(a) Any landfill that is not covered by R315-8-14.2(c) or R315-7-21.2(a) shall have a liner system for all portions of the landfill, except for existing portions of the landfill. The liner system shall have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the landfill. The liner shall be constructed of material that prevents wastes from passing into the liner during the active life of the facility. The liner shall be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth at any point on the liner system, does not exceed 30 cm, one foot. The leachate collection and removal system shall be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(ii) Designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of R315-8-14.2(a) if the Board finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Board will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-14.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-14.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-14.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as

effectively as the liners and leachate collection and removal systems specified in R315-8-14.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in R315-8-14.2(h) may be waived by the Board for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristics in R315-2-9(g) and EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking:

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permit; or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from R315-8-14.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(h) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.

(k) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

14.3 MONITORING AND INSPECTION

(a) During construction or installation, liners, except in the case of existing portions of landfills exempt from R315-8-14.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a landfill is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) Proper functioning of wind dispersal control systems, where present; and

(3) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c)(1) An owner or operator required to have a leak detection system under R315-8-14.2(c) or (d) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

14.4 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required under R315-8-5.3, which incorporates by reference 40 CFR 264.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed bench marks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

14.5 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained under R315-8-9.8 and R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, including maintenance and monitoring throughout the post-closure care period, specified in the permit, under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) Maintain and monitor the leak detection system in accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-8-14.3(c), and comply with all other applicable leak detection system requirements of R315-8;

(4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of

these rules;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed bench marks used in complying with R315-8-14.4.

14.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-8-14.6(b), and in R315-8-14.10, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-8-14.6(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

14.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials shall not be placed in the same landfill cell, unless R315-8-2.8(b) is complied with.

14.8 SPECIAL REQUIREMENTS FOR LIQUID WASTE

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill, prior to May 8, 1985, if:

(1) The landfill has a liner and leachate collection and removal system that meet the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test shall be used: Method 9095, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846 as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(d) Containers holding free liquids shall not be placed in a landfill unless:

(1) All free-standing liquid:

(i) Has been removed by decanting, or other methods;

(ii) Has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) Has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-8-14.10, and is disposed of in accordance with R315-8-14.10.

(e) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-8-14.8(e)(1); materials that pass one of the tests in R315-8-14.8(e)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under the Organization for Economic Cooperation and Development (OECD) test 301B, CO_2 Evolution, Modified Sturm Test.

(f) Effective November 8, 1985, the landfill placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Board, or the Board determines that;

(1) The only reasonably available alternative to the placement in the landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in the owner or operator's landfill will not present a risk of contamination of any underground source of drinking water, as that term is defined in 40 CFR 144.3.

14.9 SPECIAL REQUIREMENTS FOR CONTAINERS

Unless they are very small, such as an ampule, containers shall be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

14.10 DISPOSAL OF SMALL CONTAINERS OF HAZARDOUS WASTE IN OVERPACKED DRUMS, LAB PACKS

Small containers of hazardous waste in overpacked drums, lab packs, may be placed in a landfill if the following requirements are met:

(a) Hazardous waste shall be packaged in non-leaking inside containers. The inside containers shall be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials

regulations, 49 CFR parts 173, 178, and 179, if those regulations specify a particular inside container for the waste.

(b) The inside containers shall be overpacked in an open head DOT - specification metal shipping container, 49 CFR parts 178 and 179, of no more than 416-liter, 110 gallon, capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with R315-8-14.8(e), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with R315-8-2.8(b).

(d) Incompatible wastes, as defined in R315-1 shall not be placed in the same outside container.

(e) Reactive wastes, other than cyanide or sulfide bearing wastes as defined in R315-2-9(f)(v) shall be treated or rendered non-reactive prior to packaging in accordance with R315-8-14.10(a) through (d). Cyanide and sulfide bearing reactive waste may be packed in accordance with R315-8-14.10(a) through (d) without first being treated or rendered non-reactive.

(f) The disposal is in compliance with the requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268. Persons who incinerate lab packs according to the requirements in R315-13, which incorporates by reference 40 CFR 268.42(c)(1), may use fiber drums in place of metal outer containers. Such fiber drums shall meet the DOT specification in 49 CFR 173.12 and be overpacked according to the requirements in R315-8-14.10(b).

14.11 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The Board may determine that additional design, operating and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

14.12 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-8-14.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-8-14.3(c), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under R315-8-14.3(c).

14.13 RESPONSE ACTIONS

(a) The owner or operator of landfill units subject to R315-8-14.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-14.13(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-14.13(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-8-14.13(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-8-15. Incinerators.

15.1 APPLICABILITY

(a) The rules in this section apply to owners or operators of facilities that incinerate hazardous waste, as defined in 40 CFR 260.10, except as R315-8-1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-8-15.1(b)(2), (3), and (4) the standards of R315-8 do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum

achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d), documenting compliance with the requirements of 307-214-2, which incorporates by reference 40 CFR 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, hazardous waste permit conditions that were based on the standards of R315-8 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of R315-8-15.8 or the applicable requirements of R315-8-1 through R315-8-8, R315-8-18, which incorporates by reference 40 CFR 264 subpart BB, and R315-8-22, which incorporates by reference 40 CFR 264 subpart CC.

(3) The particulate matter standard of R315-8-15.4(b) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of R307-214-2, which incorporates by reference 40 CFR 63.1206(b)(14) and 63.1219(e).

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) R315-8-15.6(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) R315-8-15.6(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(c) After consideration of the waste analysis included with part B of the permit application, the Executive Secretary, in establishing the permit conditions, shall exempt the applicant from all requirements of this section except R315-8-15.2, Waste Analysis and R315-8-15.8, Closure,

(1) If the Executive Secretary finds that the waste to be burned is:

(i) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is ignitable, Hazard Code I, corrosive Hazard Code C, or both; or

(ii) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristics of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under R315-2-9, or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by R315-2-9(f)(1)(i), (ii), (iii), (vi), (vii), and (viii) and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which could reasonably be expected to be in the waste.

(d) If the waste to be burned is one which is described by R315-8-15.1(c)(1)(i), (ii), (iii), or (iv) and contains insignificant concentrations of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, then the Executive Secretary may, in establishing permit conditions, exempt the applicant from all requirements of this section except R315-8-15.2, Waste analysis and R315-8-15.8, Closure, after consideration of the waste analysis included with part B of the permit application, unless the Executive Secretary finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-6.3.

15.2 WASTE ANALYSIS

(a) As a portion of the trial burn plan required by R315-3-6.3 or with part B of the permit the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by R315-3-6.3(b) or R315-3-2.10. Owners or operators of new hazardous waste incinerators shall provide the information required by R315-3-6.3(c) or R315-3-2.10 to the greatest extent possible.

(b) Throughout normal operation the owner or operator shall conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit, R315-8-15.6.

15.3 PRINCIPAL ORGANIC HAZARDOUS CONSTITUENTS (POHCS)

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed shall be treated to the extent required by the performance standard of R315-8-15.4.

(b)(1) One or more POHCs will be specified in the facility's permit, from among these constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with part B of the permit. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified R315-3-6.3 for obtaining trial burn permits.

15.4 PERFORMANCE STANDARDS

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under R315-8-15.6, it will meet the following performance standards:

(a)(1) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated, R315-8-15.3, in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$DRE = (W_{in} - W_{out}) / W_{in} \times 100\%$

Where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour, 4 pounds per hour, of hydrogen chloride (HC1) shall control HC1 emissions so that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one percent of the HC1 in the stack gas prior to entering any pollution control equipment.

(b) An incinerator burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter, 0.08 grains per dry standard cubic foot, when corrected for the amount of oxygen in the stack gas according to the formula:

$P_c = P_m \times 14 / (21-Y)$

When P_c is correct concentration of particulate matter, P_m

is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, as presented in 40 CFR 60 Appendix A Method 3. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Executive Secretary will select an appropriate correction procedure, to be specified in the facility permit.

(c) For purposes of permit enforcement, compliance with the operating requirements specified in the permit under R315-8-15.6 will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under R315-3-4.2.

(d) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated, under R315-8-15.3, in its permit. This performance shall be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in R315-8-15.4(a)(1). In addition, the owner or operator of the incinerator shall notify the Executive Secretary of his intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

15.5 HAZARDOUS WASTE INCINERATOR PERMITS

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under 8.15.6., except:

(1) In approved trial burns, R315-3-6.3, or

(2) Under exemptions created by R315-8-15.1.

(b) Other hazardous wastes may be burned after operating conditions have been specified in a new permit or a permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with part B of a permit under R315-3-2.10.

(c) The permit for a new hazardous waste incinerator shall establish appropriate conditions for each of the applicable requirements of this section including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of R315-8-15.6, sufficient to comply with the following standards:

(1) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in R315-8-15.5(c)(2), not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall be those most likely to ensure compliance with the performance standards in R315-8-15.4 based on the Executive Secretary's engineering judgement. The Executive Secretary may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant;

(2) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the performance standards of R315-8-15.4 and shall be in accordance with the approved trial burn plan;

(3) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Executive Secretary, the operating requirements shall be those most likely to ensure compliance with the performance standards of R315-8-15.4 based on the Executive Secretary's engineering judgement.

(4) For the remaining duration of the permit, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in R315-3-2.10(c), as sufficient to ensure compliance with the performance standards of R315-8-15.4.

15.6 OPERATING REQUIREMENTS

(a) An incinerator shall be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated, in a trial burn or in alternative data as specified in R315-8-15.5(b), and included with part B of a facility's permit to be sufficient to comply with the performance standards of R315-8-15.4.

(b) Each set of operating requirements will specify the composition of the waste feed, including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirements of R315-8-15.4, to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(1) Carbon monoxide (CO) level in the stack exhaust gas;

(2) Waste feed rate;

(3) Combustion temperature;

(4) An appropriate indicator of combustion gas velocity;

(5) Allowable variations in incinerator system design or operating procedures; and

(6) Any other operating requirements as are necessary to ensure that the performance standards of R315-8-15.4 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste, except wastes exempted in accordance with R315-8-15.1, shall not be fed into the incinerator unless the incinerator is operating within the conditions of operation, temperature, air feed rate, etc., specified in the permit.

(d) Fugitive emissions from the combustion zone shall be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(3) An alternative means of control demonstrated, with part B of the permit to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator shall be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under R315-8-15.6(a).

(f) An incinerator shall cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

15.7 MONITORING AND INSPECTIONS

(a) The owner or operator shall conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(1) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit shall be monitored on a continuous basis.

(2) Carbon monoxide (CO) shall be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Board, sampling and analysis of the waste and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the performance standards of R315-8-15.4.

(b) The incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be subjected to thorough visual inspection, at least daily, for leaks, spills, fugitive emissions, and signs of tampering.

(c) The emergency waste feed cutoff system and associated alarms shall be tested at least weekly to verify

operability, unless the applicant demonstrates to the Board that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing shall be conducted at least monthly.

(d) This monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by R315-8-5.3, which incorporates by reference 264.73.

15.8 CLOSURE

At closure the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash, scrubber waters, and scrubber sludges, from the incinerator site.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-3(d), that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements. R315-4 - R315-9.

R315-8-16. Miscellaneous Units.

The requirements as found in 40 CFR 264, subpart X, which includes sections 264.600 through 264.603, 2000 ed., are adopted and incorporated by reference.

R315-8-17. Air Emission Standards for Process Vents.

The requirements as found in 40 CFR subpart AA sections 264.1030 through 264.1036, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

R315-8-18. Air Emission Standards for Equipment Leaks.

The requirements as found in 40 CFR subpart BB sections 264.1050 through 264.1065, 2004 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-8-19. Drip Pads.

The requirements as found in 40 CFR subpart W sections 264.570 through 264.575, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

R315-8-20. Containment Buildings.

The requirements of subpart DD sections 264.1100 through 264.1110, as found in 57 FR 37194, August 18, 1992, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-8-21. Corrective Action for Solid Waste Management Units.

The requirements of 40 CFR 264, subpart S, which includes sections 264.550 through 264.555, 2000 ed., as amended by 67 FR 2962, January 22, 2002, are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-8-22. Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The requirements as found in 40 CFR subpart CC, sections 264.1080 through 264.1091, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste

January 15, 2010 19-6-105

Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-13. Land Disposal Restrictions.
R315-13-1. Land Disposal Restrictions.

The requirements as found in 40 CFR 268, 2001 ed., as amended by 65 FR 67068, November 8, 2000; 65 FR 81373, December 26, 2000; 66 FR 27266, May 16, 2001; 66 FR 58258, November 20, 2001; 67 FR 17119, April 9, 2002; 67 FR 62618, October 7, 2002; 67 FR 48393, July 24, 2002; and 70 FR 9138, February 24, 2005, are adopted and incorporated by reference including Appendices III, IV, VI, VII, VIII, IX, and XI, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(c) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
R315-14-1. General Requirements.

(a) Purpose, Scope, and Applicability.

(1) The purpose of R315-14 is to establish minimum State standards which define the acceptable management of certain hazardous wastes and the acceptable practices for certain kinds of hazardous waste management facilities.

(2) R315-14 applies, in lieu of the requirements of R315-8 or R315-7, to the owners and operators of eligible hazardous waste management facilities.

R315-14-2. Recyclable Materials Used in a Manner Constituting Disposal.

(a) The requirements regarding recyclable materials used in a manner constituting disposal of 40 CFR 266.20 to 266.23, inclusive, 2003 ed., are adopted and incorporated by reference.

R315-14-3. Reserved.

Reserved.

R315-14-4. Reserved.

Reserved.

R315-14-5. Recyclable Materials Utilized for Precious Metal Recovery.

The requirements regarding recyclable materials utilized for precious metal recovery of 40 CFR 266.70, 1996 ed., are adopted and incorporated by reference.

R315-14-6. Spent Lead-Acid Batteries Being Reclaimed.

The requirements regarding spent lead-acid batteries being reclaimed of 40 CFR 266.80, 1998 ed., as amended by 63 FR 71225, December 24, 1998, are adopted and incorporated by reference.

R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces.

The requirements as found in 40 CFR 266, Subpart H, 266.100 - 266.112, 2008 ed., are adopted and incorporated by reference.

R315-14-8. Military Munitions.

For purposes of 19-6-102(17)(a), a used or fired military munition is a solid waste, and, therefore, is potentially subject to 19-6-105(1)(d) and 19-6-112, or imminent and substantial endangerment authorities under 19-6-115 if the munition lands off-range and is not promptly rendered safe or retrieved or both. Any imminent and substantial threats associated with any remaining material shall be addressed. If remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record shall include the type of munition and its location, to the extent the location is known.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-50. Appendices.
R315-50-1. Reserved.
Reserved.

R315-50-2. Recordkeeping Instructions.
The recordkeeping requirements of 40 CFR 264, Appendix I, and 265, Appendix I, 1993 ed., as amended by 59 FR 13891, March 24, 1994, are adopted and incorporated by reference.

R315-50-3. EPA Interim Primary Drinking Water Standards.
The interim primary drinking water standards of 40 CFR 265, Appendix III, 1991 ed., are adopted and incorporated by reference.

R315-50-4. Tests for Significance.
The requirements of 40 CFR 264 and 265, Appendix IV, 1991 ed., are adopted and incorporated by reference.

R315-50-5. Examples of Potentially Incompatible Waste.
The requirements of 40 CFR 264, Appendix V, and 265, Appendix V, 1991 ed., are adopted and incorporated by reference.

R315-50-6. Representative Sampling Methods.
The requirements of 40 CFR 261, Appendix I, 1991 ed., are adopted and incorporated by reference with the following exception:
Substitute "Board" for all references to "Agency".

R315-50-7. Toxicity Characteristic Leaching Procedure (TCLP).
The requirements of 40 CFR 261, Appendix II, 1993 ed., as amended by 58 FR 46040, August 31, 1993, are adopted and incorporated by reference.

R315-50-8. Chemical Analysis Test Methods.
The requirements of 40 CFR 261, Appendix III, 1993 ed., as amended by 58 FR 46040, August 31, 1993, are adopted and incorporated by reference.

R315-50-9. Basis for Listing Hazardous Wastes.
The requirements of 40 CFR 261, Appendix VII, 2002 ed., as amended by FR 70 9138, February 24, 2005, are adopted and incorporated by reference, with the following additions, excluding the constituents for which K064, K065, K066, K090, and K091 are listed:
1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-50-10. Hazardous Constituents.
The requirements of 40 CFR 261, Appendix VIII, 2002 ed., as amended by FR 70 9138, February 24, 2005, are adopted and incorporated by reference.

R315-50-11. Political Jurisdiction in Which Compliance with R315-8-2.9(a) Must be Demonstrated Within the State of Utah.
Beaver
Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Garfield
Grand
Iron
Juab
Kane
Millard
Morgan
Piute
Rich
Salt Lake
San Juan
Sanpete
Sevier
Summit
Tooele
Uintah
Utah
Wasatch
Washington
Wayne
Weber

R315-50-12. Reserved.
Reserved.

R315-50-13. Reserved.
Reserved.

R315-50-14. Ground Water Monitoring List.
The requirements of 40 CFR 264, Appendix IX, Groundwater Monitoring List, 1997 ed., are adopted and incorporated by reference.

R315-50-15. Reserved.
Reserved.

R315-50-16. Appendices to 40 CFR 266.
The requirements of 40 CFR 266, Appendices I - IX and XI - XIII, 2000 ed., are adopted and incorporated by reference.

R315-50-17. Compounds With Henry's Law Constant.
The requirements of Appendix VI of 40 CFR 265, Compounds with Henry's Law Constant, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

KEY: hazardous waste
January 15, 2010 **19-6-106**
Notice of Continuation August 24, 2006 **19-6-108**
19-6-105

R315. Environmental Quality, Solid and Hazardous Waste.
R315-316. Infectious Waste Requirements.
R315-316-1. Applicability.

(1) The standards of Rule R315-316 apply to:

(a) any health facility that generates more than 200 pounds, per month, of infectious waste;

(b) any transporter that collects and transports more than 200 pounds of infectious waste in any one load; and

(c) a facility storing more than 200 pounds of infections waste, or a facility treating or disposing of infectious waste.

(2) The standards of Rule R315-316 do not apply to

(a) any health facility that generates 200 pounds, or less, of infectious waste per month;

(b) any transporter that:

(i) collects and transports 200 pounds or less of infectious waste from all generators in any one load; or

(ii) collects infectious waste only from facilities that generate 200 pounds or less of infectious waste per week; and

(c) infectious waste generated by a household.

R315-316-2. General Operational Requirements.

(1) Every owner and operator of a health facility or a transporter of infectious waste, regulated by Rule R315-316, that generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

(a) type and estimated quantity of waste generated or handled;

(b) segregation, packaging, and labeling procedures;

(c) collection, storage, and transportation procedures;

(d) treatment or disposal methods that will be used; and

(e) the person responsible for the management of the infectious waste.

(2) Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment in a location appropriate for human remains.

(3) For the purposes of Rule R315-316 "sharps" means any object that may be contaminated with a pathogen and that is capable of cutting or penetrating skin or a packaging material.

R315-316-3. Storage and Containment Requirements.

(1) Infectious waste shall be contained in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects or rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste during storage.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage or handling.

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All infectious waste containers should be red or orange and shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste, the surface of the liner has not been damaged or punctured.

(8) Storage and containment areas shall: protect infectious waste from the elements; be ventilated to the outside atmosphere; be accessible only to authorized persons; and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, the infectious waste shall be stored at or below a temperature of 40 degrees Fahrenheit (5 degrees Celsius).

(10) Under no conditions may infectious waste be stored for longer than 60 days.

(11) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle or unless all of the waste is to be treated as infectious waste in accordance with Rule R315-316.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

(a) be trained in the proper use of protective equipment;

(b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and

(c) shall have face shields and respirators available.

(d) Protective gear that becomes soiled with infectious waste shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Executive Secretary.

(4) Vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation related to infectious, biohazardous or biomedical waste.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be designed and constructed, and its contents limited, so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) All material that has been rendered non-infectious through an approved treatment method may be handled as non-

infectious solid waste, provided it is not otherwise a hazardous waste or a radioactive waste excluded from disposal in a solid waste facility by Rules R315-301 through 320.

(b) Except for incineration and steam sterilization, no treatment method may be used to render materials non-infectious without receiving prior approval from the Executive Secretary.

(3) Infectious waste may be incinerated in an incinerator provided the incinerator is permitted or approved under Rules R315-301 through 320.

(4) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available, and shall certify in writing that he understands, written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure of container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate Bacillus stearothermophilus spores in the center of the waste load at a 6 Log_{10} reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature-sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached and a pressure of at least 15 psi was maintained during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less frequent.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day and the date of each load and the operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature, pressure, and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis when the 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 in an identical way to the treatment process being proposed for approval; and

(ii) the results of the tests must document that the proposed treatment method inactivates:

(A) vegetative bacteria - Staphylococcus aureus (ATCC 6538) or Pseudomonas aeruginosa (ATCC 15442) at a 6 Log_{10} reduction or greater (a 99.9999% reduction or greater of the organism population);

(B) fungi - Candida albicans (ATCC 18804), Penicillium chrysogenum (ATCC 24791), or Aspergillus niger at a 6 Log_{10} reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage (ATCC15597-B1) at a 6 Log_{10} reduction or greater;

(D) parasites - Cryptosporidium spp. oocysts or Giardia spp. cysts at a 6 Log_{10} reduction or greater;

(E) mycobacteria - Mycobacterium terrae or Mycobacterium phlei at a 6 Log_{10} reduction or greater; and

(B) Bacterial spores - Bacillus stearothermophilus spores (ATCC 7953) or Bacillus subtilis spores (ATCC 19659) at a 4 Log_{10} reduction or greater (a 99.99% reduction or greater of the organism population).

(iii) The Executive Secretary shall review the submitted materials and reply in writing within 30 days of the receipt of the treatment studies.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers in the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal
January 15, 2010 **19-6-105**
Notice of Continuation February 14, 2008

R356. Governor, Criminal and Juvenile Justice (State Commission on).
R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates.
R356-1-1. Authority and Purpose.

(1) This rule is authorized in accordance with Subsection 64-13e-104(5)(b).

(2) The purpose of this rule is to establish procedures to reimburse counties for incarcerating state probationary inmates or state parole inmates and to determine the rate at which the counties shall be reimbursed.

R356-1-2. Definitions.

In addition to terms defined in Section 64-13e-102:

(1) "Total Inmate Days" means the total number of eligible probationary and state parole inmate incarceration days.

(2) "Business Day" means Monday through Friday excluding holidays.

R356-1-3. Conditions for Reimbursement of State Probationary Inmates.

Counties shall be eligible for reimbursement for days served in county correctional facilities under the following conditions:

(1) The inmate has been convicted of a felony, and as a condition of probation, has been sentenced to a county correctional facility for a period not exceeding one year. The reimbursement period will begin with the sentencing date.

(2) Days served under Subsection 1 which are eligible for reimbursement may include:

(a) Consecutive felony probation jail sentences, pursuant to Section 76-3-401;

(b) The inmate is sentenced by the courts to a county correctional facility following a violation of felony probation (Order to Show Cause). If the inmate's probation has been terminated it must be reinstated for the county to be eligible for reimbursement;

(c) The inmate is sentenced by the courts to a county correctional facility after a court has formally entered a guilty plea that had been held in abeyance as a conviction.

R356-1-4. Conditions Not Eligible for Reimbursement of State Probationary Inmates.

Counties are not eligible for reimbursement for incarcerating inmates in the following circumstances:

(1) Time served in a county correctional facility prior to sentencing, notwithstanding an order from the court for credit for time served;

(2) Time served in a county correctional facility following an unsuccessful termination of probation;

(3) Time served in a county correctional facility under a Plea in Abeyance agreement prior to the entering of the guilty plea as a conviction in the case;

(4) Time served on a felony probation sentence outside a correctional facility on electronic monitoring;

(5) Time served in a county correctional facility on a federal Immigration and Customs Enforcement hold beyond the number of days sentenced to jail by the Courts, even if probation is still in effect;

(6) Time served in a county correctional facility under the jurisdiction of the Juvenile Court;

(7) Time served in a county correctional facility on a probationary 3-day hold.

R356-1-5. Conditions for Reimbursement of State Parole Inmates.

(1) Counties shall be eligible for reimbursement for days served in county correctional facilities by state parole inmates when the inmate is being held on a 3-day hold issued by the Board of Pardons and Parole.

(2) Counties shall be reimbursed for state parole inmates on a 3-day hold for up to 3 business days plus weekends and holidays for a maximum of 6 days of reimbursement per 3 day hold.

R356-1-6. Monthly Billing Invoices.

(1) Counties requesting reimbursement for incarcerating state probationary inmates or state parole inmates shall submit, on a monthly basis, the following information to CCJJ:

(a) Inmate name;

(b) Court case number(s) authorizing jail as a condition of probation;

(c) Sentencing date;

(d) Incarceration start date;

(e) Release date from correctional facility;

(f) Total number of state inmates (probation and parole) for which the county is requesting reimbursement; and

(g) Total number of state probationary inmate days of incarceration and total number of state parole inmate days of incarceration for which the county is requesting reimbursement.

(2) Counties shall be reimbursed for all inmate incarceration days (felony probation and felony parole) beginning on the first day of incarceration after sentencing (day of sentencing shall be included), but never the last day of incarceration (day of release). Counties incarcerating inmates beyond eligible sentence days shall only be reimbursed for those days the inmate was eligible for reimbursement.

(3) Monthly billing invoices shall be submitted to CCJJ by the 10th business day of each month unless prior approval has been authorized by the Executive Director of CCJJ or designee.

(4) CCJJ shall audit each billing invoice for accuracy, using Utah State Courts X-Change program and Department of Corrections Otrack-Ftrack data systems to verify information. When necessary, CCJJ shall contact the correctional facility or sentencing court to verify accuracy of information.

(5) Back billings or late billings are eligible for reimbursement within the same fiscal year period. The 10th business day of August shall be the final day to submit late billings for the previous fiscal year.

(6) For each monthly billing invoice submitted, CCJJ shall return to the county:

(a) An approval sheet listing total inmate days of incarceration submitted to the Division of Finance for reimbursement; and

(b) A copy of the original billing invoice with any corrections that were made to the original billing.

(7) CCJJ may request counties to submit additional information regarding inmate booking and release when necessary to complete invoice audits.

R356-1-7. Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates.

To ensure compliance with Subsection 64-13e-104(5)(c), CCJJ shall prepare two calculations of payment for counties. CCJJ shall determine which calculation to use based upon funds appropriated by the Legislature for payment.

(1) When funds appropriated by the Legislature are sufficient to reimburse counties at a rate of 50% of the final daily incarceration rate for the preceding fiscal year established pursuant to Section 64-13e-105, the Division of Finance shall reimburse each county that houses a state probationary inmate or state parole inmate at a rate of 50% of the state daily incarceration rate multiplied by the total inmate days of incarceration established in the Administrative Rule Section R356-1-6 for the preceding fiscal year.

(2) When funds appropriated by the Legislature are not

sufficient to reimburse counties under Subsection 64-13e-104(2), each county that houses a state probationary inmate or state parole inmate shall be reimbursed by a rate calculated on a pro rata basis, based on the total inmate days of incarceration that were approved for each county for the preceding fiscal year. The funds appropriated by the legislature will be divided by the total of inmate days of incarceration of all counties to establish a pro rata rate. Each county shall be reimbursed by multiplying the pro rata rate established under this subsection by the total inmate days of incarceration for each county established in this Administrative Rule Section R356-1-6 for the preceding fiscal year.

KEY: jail reimbursement, state probationary inmates, state parole inmates
January 4, 2010 64-13e-104

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

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

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective January 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than January 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, January 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective January 1, 2010.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be

subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) Prior authorization is a utilization control process to verify that the client is eligible to receive the service and that the service is medically necessary. Prior authorization requirements are identified in Section I sub-section 9 of the Utah Medicaid Provider Manual. Additional prior authorization instructions for specific types of providers is found in Section II of the Medicaid Provider Manual. All necessary medical record documentation for prior approval must be submitted with the request. If the provider has not followed the prior authorization instructions and obtained prior authorization for a service identified in the Medicaid Provider Manual as requiring prior authorization, the Department shall not reimburse for the service.

(4) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(5) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(6) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah

Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

KEY: Medicaid
January 27, 2010 **26-1-5**
Notice of Continuation April 16, 2007 **26-18-3**
23-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14A. Hospice Care.
R414-14A-1. Introduction and Authority.

This rule is authorized by Sections 26-1-5 and 26-18-3. It implements Medicaid hospice care services as found in 42 U.S.C. 1396d(o).

R414-14A-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Attending physician" means a physician who:

(a) is a doctor of medicine or osteopathy; and

(b) is identified by the client at the time he or she elects to receive hospice care as having the most significant role in the determination and delivery of the client's medical care.

(2) "Cap period" means the 12 month period ending October 31 used in the application of the cap on reimbursement for inpatient hospice care as described in Subsection R414-14A-22(5).

(3) "Employee" means an employee of the hospice provider or, if the hospice provider is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" includes a volunteer under the direction of the hospice provider.

(4) "Hospice care" means care provided to terminally ill clients by a hospice provider.

(5) "Hospice provider" means a provider that is licensed under the provisions of Rule R432-750 and is primarily engaged in providing care to terminally ill individuals.

(6) "Physician" means a doctor of medicine or osteopathy who is licensed by the state of Utah.

(7) "Representative" means an individual who has been authorized under state law to make health care decisions, including initiating, continuing, refusing, or terminating medical treatments for a client who is mentally unable to make health care decisions.

(8) "Terminally ill" means the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

R414-14A-3. Client Eligibility Requirements.

(1) A client who is terminally ill may obtain hospice care pursuant to this rule.

(2) A client's certification of a terminal condition required for hospice eligibility must be based on a face-to-face assessment by a physician conducted no more than 90 days prior to the date of enrollment.

(3) A client dually enrolled in Medicare and Medicaid must elect the hospice benefit for both Medicare and Medicaid. The client must receive hospice coverage under Medicare. Election for the Medicaid hospice benefit provides the client coverage for Medicare co-insurance and coverage for room and board expenses while a resident of a Medicare-certified nursing facility, Intermediate Care Facility for the Mentally Retarded (ICF/MR), or freestanding hospice facility.

R414-14A-4. Program Access Requirements.

(1) Hospice care may be provided only by a hospice provider licensed by the Department, that is Medicare certified in accordance with 42 CFR Part 418, and that is a Medicaid provider.

(2) A hospice provider must have a valid Medicaid provider agreement in place prior to initiating hospice care for Medicaid clients. The Medicaid provider agreement is effective on the date a Medicaid provider application is received in the Department and shall not be made retroactive to an earlier date, including an earlier effective date of Medicare hospice certification.

(3) At the time of a change of ownership, the previous owner's provider agreement terminates as of the effective date of the change of ownership.

(4) The Department accepts all waivers granted to hospice agencies by the Centers for Medicare and Medicaid Services as part of the Medicare certification process.

(5) Hospice agencies participating in the Medicaid program shall provide hospice care in accordance with the requirements of 42 CFR Part 418.

R414-14A-5. Service Coverage.

Hospice care categories eligible for Medicaid reimbursement are the following:

(1) "Routine home care day" is a day in which a client who has elected to receive hospice care is at home and is not receiving continuous home care as defined in Subsection R414-14A-5(5). For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(2) "Continuous home care day" is a day in which a client who has elected to receive hospice care receives a minimum of eight aggregate hours of care from the hospice provider during a 24-hour day, which begins and ends at midnight. The eight aggregate hours of care must be predominately nursing care provided by either a registered nurse or licensed practical nurse. Continuous home care is only furnished during brief periods of crisis in which a patient requires continuous care that is primarily nursing care to achieve palliation or management of acute medical symptoms. For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(3) "Inpatient respite care day" is a day in which the client who has elected hospice care receives short-term inpatient care when necessary to relieve family members or other persons caring for the client at home.

(4) "General inpatient care day" is a day in which a client who has elected hospice care receives general inpatient care for pain control or acute or chronic symptom management that cannot be managed in a home or other outpatient setting. General inpatient care may be provided in a hospice inpatient unit, a hospital, or a nursing facility.

(5) "Room and Board" is medication administration, performance of personal care, social activities, routine and therapeutic dietary services, meal service including direct feeding assistance, maintaining the cleanliness of the client's room, assistance with activities of daily living, durable equipment, prescribed therapies, and all other services unrelated to care associated with the terminal illness that would be covered under the Medicaid State Plan nursing facility benefit.

R414-14A-6. Hospice Election.

(1) A client who meets the eligibility requirement for Medicaid hospice must file an election statement with a particular hospice. If the client is physically or mentally incapacitated, his or her legally authorized representative may file the election statement.

(2) Each hospice provider designs and prints its own election statement. The election statement must include the following:

(a) identification of the particular hospice that will provide care to the client;

(b) the client's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness;

(c) acknowledgment that the client waives certain Medicaid services as set forth in Section R414-14A-11;

(d) acknowledgment that the client or representative may revoke the election of the hospice benefit at any time in the

future and therefore become eligible for Medicaid services waived at the time of hospice election as set forth in Section R414-14A-8; and

(e) the signature of the recipient or representative.

(3) The effective date of the election may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement

(4) An election to receive hospice care remains effective through the initial election period and through the subsequent election periods without a break in care as long as the client:

(a) remains in the care of a hospice;

(b) does not revoke the election; and

(c) is not discharged from the hospice.

(5) The hospice provider must notify the Department at the time a Medicaid client selects the hospice benefit, including selecting the hospice provider under a change of designated hospice. The notification must include a copy of the hospice election statement and the client's plan of care for hospice care. Authorization for reimbursement of hospice care begins no earlier than the date notification is received by the Department for an eligible Medicaid client, except as provided in Section R414-14A-19.

(6) Subject to the conditions set forth in this rule, a client may elect to receive hospice care during one or more of the following election periods:

(a) an initial 90-day period;

(b) a subsequent 90-day period; or

(c) an unlimited number of subsequent 60-day periods.

R414-14A-7. Change in Hospice Provider.

(1) A client or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(2) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(3) To change the designation of hospice provider, the client must file, with the hospice provider from which care has been received and with the newly designated hospice provider, a statement that includes the following information:

(a) the name of the hospice provider from which the client has received care;

(b) the name of the hospice provider from which the client plans to receive care; and

(c) the date the change is to be effective.

(4) The client must file the change on or before the effective date.

R414-14A-8. Revocation and Re-election of Hospice Services.

(1) A client or legal representative may voluntarily revoke the client's election of hospice care at any time during an election period.

(2) To revoke the election of hospice care, the client or representative must file a statement with the hospice provider that includes the following information:

(a) a signed statement that the client or representative revokes the client's election for Medicaid coverage of hospice care.

(b) the date that the revocation is to be effective, which may not be earlier than the date that the revocation is made; and

(c) an acknowledgment signed by the patient or the patient's representative that the patient will forfeit Medicaid hospice coverage for any remaining days in that election period.

(3) Upon revocation of the election of Medicaid coverage of hospice care for a particular election period, a client:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage for the benefits waived under Section R414-14A-6; and

(c) may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

(4) If an election has been revoked, the client, or his or her representative if the client is mentally incapacitated, may at any time file an election, in accordance with this rule, for any other election period that is still available to the client.

(5) Hospice providers shall not encourage clients to temporarily revoke hospice services solely for the purpose of avoiding financial responsibility for Medicaid services that have been waived at the time of hospice election as described in Section R414-14A-9.

(6) Hospice providers must send notification to the Department within ten calendar days that a client has revoked hospice benefits. Notification must include a copy of the revocation statement signed by the client or the client's legal representative.

R414-14A-9. Rights Waived to Some Medicaid.

(1) For the duration of an election for hospice care, a client waives all rights to Medicaid to the following services:

(a) hospice care provided by a hospice other than the hospice designated by the client, unless provided under arrangements made by the designated hospice; and

(b) any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or are duplicative of hospice care except for services:

(i) provided by the designated hospice;

(ii) provided by another hospice under arrangements made by the designated hospice; and

(iii) provided by the client's attending physician if the services provided are not otherwise covered by the payment made for hospice care.

(2) Medicaid services for illnesses or conditions not related to the client's terminal illness are not covered through the hospice program but are covered when provided by the appropriate provider.

R414-14A-10. Notice of Hospice Care in a Nursing Facility, ICF/MR, or Freestanding Inpatient Hospice Facility.

(1) The hospice provider must notify the Department at the time a Medicaid client residing in a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility elects the Medicaid hospice benefit or at the time a Medicaid client who has elected the Medicaid hospice benefit is admitted to a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility.

(2) The notification must include a prognosis of the time the client will require skilled nursing facility services under the hospice benefit.

(3) Except as provided in Section R414-14A-20, reimbursement for room and board begins no earlier than the date the hospice provider notifies the Department that the client has elected the Medicaid hospice benefit.

R414-14A-11. Notice of Independent Attending Physician.

The hospice provider must notify the Department at the time a Medicaid client designates an attending physician who is not a hospice employee.

R414-14A-12. Extended Hospice Care.

(1) Clients who accumulate 12 or more months of hospice benefits are subject to an independent utilization review by a physician with expertise in end-of-life and hospice care selected by the Department.

(2) If Medicare determines that a patient is no longer eligible for Medicare reimbursement for hospice services, the patient will no longer be eligible for Medicaid reimbursement

for hospice services. Providers must immediately notify Medicaid upon learning of Medicare's determination. Medicaid reimbursement for hospice services will cease the day after Medicare notifies the hospice provider that the client is no longer eligible for hospice care.

R414-14A-13. Provider Initiated Discharge from Hospice Care.

(1) The hospice provider may not initiate discharge of a patient from hospice care except in the following circumstances:

(a) the patient moves out of the hospice provider's geographic service area or transfers to another hospice provider by choice;

(b) the hospice determines that the patient is no longer terminally ill; or

(c) the hospice provider determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's behavior (or the behavior of other persons in the patient's home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability fo the hospice to operate effectively is seriously impaired.

(2) The hospice provider must carry out the following activities before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a diligent effort to resolve the problem that the patient's behavior or situation presents;

(c) ascertain that the discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem and efforts to resolve the problem in the patient's medical record.

(3) Before discharging a patient for any reason listed in Subsection R414-14A-13(1), the hospice provider must obtain a physician's written discharge order from the hospice provider's medical director. If a patient also has an attending physician, the hospice provider must consult the physician before discharge and the attending physician must include the review and decision in the discharge documentation.

(4) A client, upon discharge from the hospice during a particular election period, for reasons other than immediate transfer to another hospice:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage of the benefits waived during the hospice coverage period; and

(c) may at any time elect to receive hospice care if the client is again eligible to receive the benefit in the future.

(5) The hospice provider must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change if that patient cannot continue to be certified as terminally ill. The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because the patient is no longer terminally ill.

R414-14A-14. Hospice Room and Board Service.

If a client residing in a nursing facility, ICF/MR or a freestanding hospice inpatient unit elects hospice care, the hospice provider and the facility must have a written agreement under which the total care of the individual must be specified in a comprehensive service plan, the hospice provider is responsible for the professional management of the client's hospice care, and the facility agrees to provide room and board and services unrelated to the care of the terminal condition to the client. The agreement must include:

(1) identification of the services to be provided by each party and the method of care coordination to assure that all services are consistent with the hospice approach to care and are organized to achieve the outcomes defined by the hospice plan of care;

(2) a stipulation that Medicaid services may be provided only with the express authorization of the hospice;

(3) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice provider;

(4) the delineation of the roles of the hospice provider and the facility in the admission process; needs assessment process, and the interdisciplinary team care conference and service planning process;

(5) requirements for documenting that services are furnished in accordance with the agreement;

(6) the qualifications of the personnel providing the services; and

(7) the billing and reimbursement process by which the nursing facility will bill the hospice provider for room and board and receive payment from the hospice provider.

(8) In cases in which nursing facility residents revoke their hospice benefits, it is the responsibility of the hospice provider to notify the nursing facility of the revocation. The notice must be in writing and the hospice provider must provide it to the nursing facility on or before the revocation date.

R414-14A-15. In Home Physician Services.

In-home physician visits by the attending physician are authorized for hospice clients if the attending physician determines that direct management of the client in the home setting is necessary to achieve the goals associated with a hospice approach to care.

R414-14A-16. Continuous Home Care.

When the hospice provider determines that a patient requires at least eight hours of primarily nursing care in order to manage an acute medical crisis, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary and were in compliance with an established plan of care in order to meet a particular crisis situation. Continuous home care is a covered benefit only as necessary to maintain the terminally ill client at home.

R414-14A-17. General Inpatient Care.

(1) General inpatient care is authorized without prior authorization for an initial ten calendar day length of stay. Prior authorization is required for any additional general inpatient care days during the same stay to verify that the client's needs meet the requirements for general inpatient care. If a hospice provider requests additional days, the subsequent requests are subject to clinical review and approval by qualified Department staff.

(2) General inpatient care days may not be used due to the breakdown of the primary care giving living arrangements or the collapse of other sources of support for the recipient.

(3) Prior authorization for additional days beyond the initial ten calendar stay must be obtained before the hospice care is provided, except as allowed in Section R414-14A-19.

R414-14A-18. Inpatient Respite Care.

When the hospice provider determines that a patient requires a short-term inpatient respite stay in order to relieve the family members or other persons caring for the client at home, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary to relieve a particular caregiver situation. Inpatient respite care may not be reimbursed for more than five consecutive days at a time. Inpatient respite care may not be reimbursed for a patient residing in a nursing facility, ICF/MR, or freestanding hospice inpatient unit.

R414-14A-19. Notification and Prior Authorization Grace

Periods.

If a new patient is already Medicaid eligible upon admission to hospice care, the hospice provider must submit a prior authorization request form to the Department in order to receive reimbursement for hospice services it renders, except in the following circumstances:

(a) during weekend, holidays, and after regular Department business hours, a hospice provider may begin service to a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a grace period up to ten calendar days before notifying the Department;

(b) before the end of the ten calendar day grace period, the hospice provider must complete and submit the prior authorization request form to the Department in order to receive reimbursement for hospice services it renders.

(c) if the hospice provider does not submit the prior authorization request form timely, the Department will not reimburse the provider for the care that it renders before the date that the form is received.

R414-14A-20. Post-Payment for Services Provided While in Medicaid-Pending Status.

(1) If a new client is not Medicaid eligible upon admission to hospice services but becomes Medicaid eligible at a later date, the Department will reimburse a hospice provider retroactively for up to 90 days to allow the hospice eligibility date to coincide with the client's Medicaid eligibility date if:

(a) the Department determines that the client met Medicaid eligibility requirements at the time the service was provided;

(b) the hospice care met the prior authorization criteria at the time of delivery; and

(c) the hospice provider reimburses the Department for care related to the client's terminal illness delivered by other Medicaid providers during the retroactive period.

(2) The hospice provider must provide a copy of the initial care plan and any other documentation to the Department adequate to demonstrate the hospice care met prior authorization criteria at the time of delivery.

R414-14A-21. Hospice Care Reimbursement.

(1) Medicaid payment for covered hospice care is made in accordance with the methodology set forth in the Utah Medicaid State Plan.

(2) A hospice provider may not charge a Medicaid client for services for which the client is entitled to have payment made under Medicaid.

(3) Medicaid reimbursement to a hospice provider for services provided during a cap period is limited to the cap amount specified in Subsection R414-14A-22(5).

(4) Medicaid does not apply the aggregate caps used by Medicare.

(5) Payment for hospice care is made on the basis of the geographic location where the service is provided as described in the Medicaid State Plan.

(6) Routine home care, continuous home care, general inpatient care, inpatient respite care services, and hospice room and board, are reimbursable to the hospice provider only.

(7) Hospice general inpatient care and inpatient respite care are not reimbursed by Medicaid for services provided in a Veterans Administration hospital or military hospital.

R414-14A-22. Payment for Hospice Care Categories.

(1) The Department establishes payment amounts for the following categories:

(a) Routine home care.

(b) Continuous home care.

(c) Inpatient respite care.

(d) General inpatient care.

(e) Room and Board service.

(2) The Department reimburses the hospice provider at the appropriate payment amount for each day for which an eligible Medicaid recipient is under the hospice's care.

(3) The Medicaid reimbursement covers the same services and amounts covered by the equivalent Medicare reimbursement rate for comparable service categories.

(4) The Department makes payment according to the following procedures:

(a) Payment is made to the hospice for each day during which the client is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day.

(b) Payment is made for only one of the categories of hospice care described in Subsection R414-14A-22(1) for any particular day.

(c) On any day in which the client is not an inpatient, the Department pays the hospice provider the routine home care rate, unless the client receives continuous home care as provided in Subsection R414-14A-5(5) for a period of at least eight hours. In that case, the Department pays a portion of the continuous care day rate in accordance with Subsection R414-14A-22(5).

(d) The hospice payment on a continuous care day varies depending on the number of hours of continuous services provided. The number of hours of continuous care provided during a continuous home care day is multiplied by the hourly rate to yield the continuous home care payment for that day. A minimum of eight hours of licensed nursing care must be furnished on a particular day to qualify for the continuous home care rate.

(e) Subject to the limitations described in Subsection R414-14A-22(5), on any day on which the client is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the client is discharged. For the day of discharge, the appropriate home care rate is paid unless the client dies as an inpatient. In the case where the client dies as an inpatient, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than five days at a time.

(5) Payment for inpatient care is limited as follows:

(a) The total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicaid clients not exceed 20 percent of the total days for which these clients had elected hospice care. Clients afflicted with AIDS are excluded when calculating inpatient days.

(b) At the end of a cap period, the Department calculates a limitation on payment for inpatient care for each hospice to ensure that Medicaid payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicaid clients by the hospice.

(c) If the number of days of inpatient care furnished to Medicaid clients is equal to or less than 20 percent of the total days of hospice care to Medicaid clients, no adjustment is necessary.

(d) If the number of days of inpatient care furnished to Medicaid clients exceeds 20 percent of the total days of hospice care to Medicaid clients, the total payment for inpatient care is determined in accordance with the procedures specified in Subsection R414-14A-22(5)(e). That amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice.

(e) If a hospice exceeds the number of inpatient care days described in Subsection R414-14A-22(5)(d), the total payment for inpatient care is determined as follows:

(i) Calculate the ratio of the maximum number of allowable inpatient days to the actual number of inpatient care days furnished by the hospice to Medicaid clients.

(ii) Multiply this ratio by the total reimbursement for inpatient care made by the Department.

(iii) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(iv) Sum the amounts calculated in Subsection R414-14A-22(5)(e)(ii) and (iii).

(6) The hospice provider may request an exception to the inpatient care payment limitation if the hospice provider demonstrates the volume of Medicaid enrollees during the cap period was insufficient to reasonably achieve the required 20% ratio.

R414-14A-23. Payment for Physician Services.

(1) The following services performed by hospice physicians are included in the rates described in Sections R414-14A-21 and 22:

(a) General supervisory services of the medical director.

(b) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(2) For services not described in Subsection R414-14A-23(1), direct care services related to the terminal illness or a related condition provided by hospice physicians are reimbursed according to the Medicaid reimbursement fee schedule for physician services. Services furnished voluntarily by physicians are not reimbursable.

(3) Services of the client's attending physician, including in-home services, are reimbursed according to the Medicaid fee schedule for State Plan physician services. Services furnished voluntarily by physicians are not reimbursable.

R414-14A-24. Hospice Payment Covers Special Modalities.

No additional Medicaid payment will be made for chemotherapy, radiation therapy, and other special modalities of care for palliative purposes regardless of the cost of the services.

R414-14A-25. Payment for Nursing Facility, ICF/MR, and Freestanding Inpatient Hospice Unit Room and Board.

(1) For clients in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit who elect to receive hospice care from a Medicaid enrolled hospice provider, Medicaid will pay the hospice provider an additional per diem for routine home care and continuous home care services to cover the cost of room and board in the facility. For nursing facilities and ICFs/MR, the room and board rate ise 95 percent of the amount that the Department would have paid to the nursing facility or ICF/MR provider for that client if the client had not elected to receive hospice care. For freestanding hospice inpatient facilities, the room and board rate is 95 percent of the statewide average paid by Medicaid for nursing facility services.

(2) Reimbursement for room and board is made to the hospice provider. The hospice provider is responsible to reimburse the facility the room and board payment received. The reimbursement is payment in full for the services described in Subsection R414-14A-14(2). The facility cannot bill Medicaid separately.

(3) If a hospice enrollee in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit has a monetary obligation to contribute to his or her cost of care in the facility, the facility must collect and retain the contribution. The hospice must reimburse the facility the reduced amount received from Medicaid directly or from a Medicaid Health Plan.

R414-14A-26. Limitation on Liability for Certain Hospice Coverage Denials.

If a client is determined not to be terminally ill while hospice care were received under this rule, the client is not responsible to reimburse the Department. If the Department denies reimbursement to the hospice provider, the hospice provider may not seek reimbursement from the client.

R414-14A-27. Medicaid Health Plans and Hospice.

(1) If a Medicaid-only client is enrolled in a Medicaid health plan, the hospice selected by the client must have a contract with the health plan. The health plan is responsible to reimburse the hospice for hospice care. The Department will not directly reimburse a hospice provider for a Medicaid-only client covered by a health plan.

(2) If a Medicaid-only client enrolled in a health plan elects hospice care before being admitted to a nursing facility, ICF/MR, or a freestanding hospice inpatient unit, the health plan is responsible to reimburse the hospice provider for both the hospice care and the room and board until the client is disenrolled from the health plan by the Department. At the point the health plan determines that the enrollee will require care in the nursing facility for greater than 30 days, the health plan will notify the Department of the prognosis of extended nursing facility services. The Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities.

(3) If a hospice enrollee is covered by Medicare for hospice care, the Medicaid health plan is responsible for the health plan's payment rate less any amount paid by Medicare and other payors. The health plan is responsible for payment even if the Medicare covered service is rendered by an out-of-plan provider or was not authorized by the health plan.

(4) The health plan is responsible for room and board expenses of a hospice enrollee receiving Medicare hospice care while the client is a resident of a Medicare-certified nursing facility, ICF/MR, or freestanding hospice facility until the client is disenrolled from the health plan by the Department. On the 31st day, the client is disenrolled from the health plan and enrolled in the Medicaid fee-for-service hospice program. At the point the Department determines that the enrollee will require care in the nursing facility for greater than 30 days, the Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities. The room and board expenses will be set in accordance with Section R414-14A-25.

(5) The hospice provider is responsible for determining if an applicant for hospice care is covered by a Medicaid health plan prior to enrolling the client, for coordinating services and reimbursement with the health plan during the period the client is receiving the hospice benefit, and for notifying the health plan when the client disenrolls from the hospice benefit.

R414-14A-28. Marketing by House Providers.

Hospice providers shall not engage in unsolicited direct marketing to prospective clients. Marketing strategies shall remain limited to mass outreach and advertisements, except when a prospective client or legal representative explicitly requests information from a particular hospice provider. Hospice providers shall refrain from offering incentives or other enticements to persuade a prospective client to choose that provider for hospice care.

R414-14A-29. Medicaid 1915c HCBS Waivers and Hospice.

(1) For hospice enrollees covered by a Medicaid 1915c Home and Community-Based Services Waiver, hospice providers shall provide medically necessary care that is directly related to the patient's terminal illness.

(2) The waiver program may continue to provide services

that are:

(a) unrelated to the client's terminal illness and;

(b) assessed by the waiver program as necessary to maintain safe residence in a home or community-based setting in accordance with waiver requirements.

(3) The waiver case management agency and the hospice case management agency shall meet together upon commencement of hospice services to develop a coordinated plan of care that clearly defines the roles and responsibilities of each program.

KEY: Medicaid
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26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review.
R414-501-1. Introduction and Authority.

This rule implements 42 USC 1396r(b)(3), (e)(5), and (f)(6)(B), and 42 CFR 456.1 through 456.23,and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. 42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.

R414-501-2. Definitions.

In addition to the definitions in Section R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the most current edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a Department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Medicaid resident" means a resident who is a Medicaid recipient.

(8) "Medicaid admission date" means the date the nursing facility requests Medicaid reimbursement to begin.

(9) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(10) "Minimum Data Set (MDS)" means the standardized, primary screening and assessment tool of health status that forms the foundation of the comprehensive assessment for all residents in a Medicare or Medicaid certified long-term care facility.

(11) "Nursing facility" is defined in 42 USC. 1396r(a), and also includes an intermediate care facility for people with mental retardation as defined in 42 USC 1396d(d).

(12) "Nursing facility applicant" is an individual for whom the nursing facility is seeking Medicaid payment.

(13) "Preadmission Screening and Resident Review (PASRR) Level I Screening" means the preadmission identification screening described in Section R414-503-3.

(14) "Preadmission Screening and Resident Review (PASRR) Level II Evaluation" means the preadmission evaluation and resident review for serious mental illness or mental retardation described in Section R414-503-4.

(15) "Physician Certification" is a written statement from the Medicaid resident's physician that certifies the individual requires nursing facility services.

(16) "Resident" means a person residing in a Medicaid-certified nursing facility.

(17) "Serious mental illness" is defined by the State Mental Health Authority.

(18) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan.

(19) "Skilled care" means those services defined in 42 CFR 409.32.

(20) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and Section R432-150-23.

(21) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(22) "United States Code (USC)" means the most current edition unless otherwise noted.

(23) "Working days" means all work days as defined by the Utah Department of Human Resource Management.

R414-501-3. Preadmission Authorization.

(1) A nursing facility will perform a preadmission assessment when admitting a nursing facility applicant. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility must obtain prior approval from the Department before admitting a nursing facility applicant. A request for prior approval may be in writing or by telephone and will include:

(a) the name, age, and Medicaid eligibility of the nursing facility applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the reason for acute care inpatient hospitalization or emergency placement, if any;

(d) a description of the care and services needed;

(e) the nursing facility applicant's current functional and mental status;

(f) the established diagnoses;

(g) the medications and treatments currently ordered for the nursing facility applicant;

(h) a description of the nursing facility applicant's discharge potential;

(i) the name of the hospital discharge planner or nursing facility employee who is requesting the prior approval;

(j) the Preadmission Screening and Resident Review (PASRR) Level I screening, except the screening is not required for admission to an intermediate care facility for people with mental retardation; and

(k) the Preadmission Screening and Resident Review (PASRR) Level II determination, as required by 42 CFR 483.112.

(4) If the Department gives a telephone prior approval, the nursing facility will submit to the Department within five working days a preadmission transmittal for the nursing facility applicant, and will begin preparing the complete contact for the nursing facility applicant. The complete contact is a written application containing all the elements of a request for prior authorization plus:

(a) the preadmission continued stay transmittal;

(b) a history and physical;

(c) the signed and dated physician's orders, including physician certification; and

(d) an MDS assessment completed no later than 14

calendar days after the resident is admitted to a nursing facility.

(5) The requirements in Section R414-501-3 do not apply in cases in which a facility is seeking Retroactive Authorization described in Section R414-501-5.

R414-501-4. Immediate Placement Authorization.

(1) The Department will reimburse a nursing facility for five days if the Department gives telephone prior approval for a resident who is an immediate placement.

(a) An immediate placement will meet one of the following criteria:

(i) The resident exhausted acute care benefits or was discharged by a hospital;

(ii) A Medicare fiscal intermediary changed the resident's level of care, or the Medicare benefit days terminated and there is a need for continuing services reimbursed under Medicaid;

(iii) Protective services in the Department of Human Services placed the resident for care;

(iv) A tragedy, such as fire or flood, has occurred in the home, and the resident is injured, or an accident leaves a dependent person in imminent danger and requires immediate institutionalization;

(v) A family member who has been providing care to the resident dies or suddenly becomes ill;

(vi) A nursing facility terminated services, either through an adverse certification action or closure of the facility, and the resident must be transferred to meet his medical or habilitation needs; or

(vii) A disaster or other emergency as defined by the Department has occurred.

(b) The Department will deny an immediate placement unless the PASRR Level I screening is completed and the Department determines a PASRR Level II evaluation is not required, or if the PASRR Level II evaluation is required, then the PASRR Level II evaluation is completed and the Department determines the nursing facility applicant qualifies for placement in a nursing facility. The two exceptions to this requirement are when the nursing facility applicant is a provisional placement for less than seven days or when the placement is after an acute hospital admission and the physician certifies in writing that the placement will be for less than 30 days.

(c) Telephone prior approval for an immediate placement will be effective for no more than five working days. During that period the nursing facility will submit a preadmission transmittal, and will begin preparing the complete contact for the nursing facility applicant. If the nursing facility fails to submit the preadmission transmittal in a timely manner, the Department will not make any payments until the Department receives the preadmission transmittal and the nursing facility complies with all preadmission requirements.

R414-501-5. Retroactive Authorization.

A nursing facility may complete a written request for Retroactive Authorization. If approved, the authorization period will begin a maximum of 90 days prior to the date the authorization request is submitted to the Department. The request for Retroactive Authorization will include documentation that will demonstrate the clinical need for nursing facility care at the time of the requested Medicaid admission date. The documentation must also demonstrate the clinical need for nursing facility care as of the current date. This documentation will allow the Department's medical professionals to determine the clinical need for nursing facility care during both the retroactive period and the current period. Documentation will include:

(a) the name of the nursing facility employee who is requesting the authorization;

(b) the Retroactive Authorization request submission date;

(c) the requested Medicaid admission date;

(d) a description of why Retroactive Authorization is being requested;

(e) the name, age, and Medicaid identification number of the nursing facility applicant;

(f) the PASRR Level I screening; except the screening is not required for admission to an intermediate care facility for people with mental retardation;

(g) the PASRR Level II determination as required by 42 CFR 483.112;

(h) a history and physical;

(i) signed and dated physician's orders, including the physician certification;

(j) MDS assessment that covers the time period for which Medicaid reimbursement is being requested; and

(k) a copy of a Medicare denial letter, a Medicaid eligibility letter, or both, as applicable.

R414-501-6. Readmission After Hospitalization.

When a Medicaid resident is admitted to a hospital, the Department will not require Preadmission Authorization when the Medicaid resident returns to the original nursing facility not later than three consecutive days after the date of discharge from the nursing facility. If the readmission occurs four or more days after the date of discharge from the nursing facility, the nursing facility will complete the Preadmission Authorization process again including revising the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

R414-501-7. Continued Stay Review.

(1) The Department will conduct a continued stay review to determine the need for continued stay in a nursing facility and to determine whether the resident has shown sufficient improvement to implement discharge planning.

(2) If a question regarding placement or the ongoing need for nursing facility services for a Medicaid resident arises, the Department may request additional information from the nursing facility. If the question remains unresolved, a Department health care professional may perform a supplemental on-site review. The Department or the nursing facility can also initiate an interim review because of a change in the Medicaid resident's condition or medical needs.

(3) A nursing facility will make appropriate personnel and information reasonably accessible so the Department can conduct the continued stay review.

(4) A nursing facility will inform the Department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge or a change from the findings in the PASRR Level I screening or PASRR Level II evaluation. A nursing facility will inform the Department of newly acquired facts relating to the resident's diagnosis, medications, treatments, care or service needs, or plan of care that may not have been known when the Department determined medical need for admission or continued stay. With any significant change, the nursing facility is responsible to revise the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

(5) The Department will deny payment to a nursing facility for services provided to a Medicaid resident who, against medical advice, leaves a nursing facility for more than two consecutive days, or who fails to return within two consecutive days after an authorized leave of absence. A nursing facility will report all such instances to the Department. The resident will complete all preadmission requirements before the Department may approve payment for further nursing facility services.

R414-501-8. Payment Responsibility.

(1) If a nursing facility accepts a resident who elects not to apply for Medicaid coverage, and the nursing facility can prove that it gave the resident or his legal representative written notice of Medicaid eligibility and preadmission requirements, then the resident or legal representative will be solely responsible for payment for the services rendered. However, if a nursing facility cannot prove it gave the notice to a resident or his legal representative, then the nursing facility will be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.

(2) For Preadmission Authorization requests described in Section R414-501-3, the Department will deny payment to a nursing facility for services provided:

(a) before the date of the verbal prior approval or the date postmarked on the envelope containing the written application, or the date the Department receives the written application (whichever is earliest);

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Preadmission Authorization request; or

(c) if the facility fails to comply with PASRR requirements.

(3) For Retroactive Authorization described in Section R414-501-5, the Department will deny payment to a nursing facility for services provided:

(a) greater than 90 days prior to the request for Retroactive Authorization;

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Retroactive Authorization request; or

(c) the facility fails to comply with PASRR requirements.

R414-501-9. General Provisions.

(1) The Department is solely responsible for approving or denying a Preadmission, Retroactive or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The Department is ultimately responsible for determining if a Medicaid resident has a clinical need for nursing facility services. If the Department determines a nursing facility applicant or Medicaid resident does not have a clinical need for nursing facility services, a written notice of agency action, in accordance with 42 CFR 431.200 through 431.246, 42 CFR 456.437 and 456.438 will be sent. If a nursing facility complies with all Preadmission Authorization, Retroactive Authorization and continued stay requirements for a Medicaid resident then the Department will provide coverage consistent with the State Plan.

(2) If a nursing facility fails to comply with all Preadmission Authorization, Retroactive Authorization or continued stay requirements, the Department will deny payment to the nursing facility for services provided to the nursing facility applicant. The nursing facility is liable for all expenses incurred for services provided to the nursing facility applicant on or after the date the nursing facility applicant applied for Medicaid. The nursing facility will not bill the nursing facility applicant or his legal representative for services not reimbursed by the Department due to the nursing facility's failure to follow Preadmission Authorization, Retroactive Authorization or continued stay rules.

(3) If the application is incomplete it will be denied. The Department will comply with notice and hearing requirements as defined in 42 CFR 431.200 through 431.246, and also send written notice to the nursing facility administrator, the attending physician, and, if possible, the next-of-kin or legal representative of the nursing facility applicant. If the Department denies a claim, the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the Department receives the initial Preadmission or Retroactive Authorization request or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the Department approves a subsequent request for authorization submitted by the nursing facility.

(4) The Department adopts the standards and procedures for conducting a fair hearing set forth in 42 USC 1396a(a)(3) and 42 CFR 431.200 through 431.246, which are incorporated by reference. Those laws are implemented in Title 63G, Chapter 4 and in Rule R410-14.

R414-501-10. Safeguarding Information of Nursing Facility Applicants and Residents.

(1) The Department adopts the standards and procedures for safeguarding information of nursing facility applicants and recipients set forth in 42 USC 1396a(a)(7) and 42 CFR 431.300 through 431.307, which are incorporated by reference.

(2) Standards for safeguarding a resident's private records are set forth in Section 63G-2-302.

R414-501-11. Free Choice of Providers.

Subject to certain restrictions outlined in 42 CFR 431.51, 42 USC 1396a(a)(23) requires that recipients have the freedom to choose a provider. A recipient who believes his freedom to choose a provider has been denied or impaired may request a hearing from the Department, as outlined in 42 CFR 431.200 through 431.221.

R414-501-12. Alternative Services Evaluation and Referral.

While reviewing a preadmission assessment for admission to a nursing care facility, other than an ICF/MR, the Department may evaluate the potential for the nursing facility applicant to receive alternative Medicaid services in a home or community-based setting that are appropriate for the needs of the individual identified in the preadmission submittals. If there appears to be a potential for alternative Medicaid services, with the permission of the nursing facility applicant, the nursing facility will refer the name of the nursing facility applicant to one or more designated Medicaid home and community-based services program representatives for follow-up contact with the nursing facility applicant.

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63G-3-304(1)(a)

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-14. Ambulance Service and Paramedic Service Licensure.
R426-14-100. Authority and Purpose.

This rule is established under Title 26, Chapter 8a. It establishes standards for the licensure of ambulance and paramedic services.

R426-14-101. Requirement for Licensure.

A person or entity that provides or represents that it provides ambulance or paramedic services must first be licensed by the Department.

R426-14-200. Licensure Types.

The Department issues licenses for a type of service at a certain service level.

(1) The Department may issue ambulance licenses for the following types of service at the given levels:

(a) Basic;

(b) Intermediate;

(c) Intermediate Advanced; and

(d) Paramedic.

(2) The Department may issue ground ambulance inter-facility transfer licenses for the following types of service at the given levels:

(a) Basic;

(b) Intermediate;

(c) Intermediate Advanced; and

(d) Paramedic.

(3) The Department may issue paramedic, non-transport licenses for the following types of service at the given response configurations:

(a) Paramedic Rescue; and

(b) Paramedic Tactical Rescue.

R426-14-201. Scope of Operations.

(1) A licensee may only provide service to its specific licensed geographic service area and is responsible to provide service to its entire specific geographic service area. It may provide emergency medical services for its category of licensure that corresponds to the certification levels in R426-12 Emergency Medical Services Training and Certification Standards.

(2) A licensee may not subcontract. A subcontract is present if a licensee engages a person that is not licensed to provide emergency medical services to all or part of its specific geographic service area. A subcontract is not present if multiple licensees allocate responsibility to provide ambulance services between them within a specific geographic service area for which they are licensed to provide ambulance service.

(3) A ground ambulance inter-facility transfer licensee may only transport patients from a hospital, nursing facility, emergency patient receiving facility, mental health facility, or other medical facility when arranged by the transferring physician for the particular patient.

R426-14-300. Minimum Licensure Requirements.

(1) A licensee must meet the following minimum requirements:

(a) have sufficient ambulances, emergency response vehicles, equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensees;

(b) have locations or staging areas for stationing its vehicles;

(c) have a current written dispatch agreement with a public safety answering point that answers and responds to 911 or E911 calls, or with a local single access public safety answering point that answers and responds to requests for emergency assistance;

(d) have current written aid agreements with other licensees to give assistance in times of unusual demand;

(e) have a Department certified EMS training officer;

(f) have a current plan of operations, which shall include:

(i) a business plan demonstrating its:

(A) ability to provide the service; and

(B) financial viability.

(ii) the number, training, and certification of personnel;

(iii) operational procedures; and

(iv) a description of the how the licensee or applicant proposes to interface with other EMS agencies;

(g) have sufficient trained and certified staff that meet the requirements of R426-15 Licensed and Designated Provider Operations;

(h) have a current written agreement with a Department-certified off-line medical director;

(i) have current treatment protocols approved by the agency's off-line medical director for the existing service level or new treatment protocols if seeking approval under 26-8a-405;

(j) be able to pay its debts as they become due;

(k) provide the Department with a copy of its certificate of insurance or if seeking application approval under 26-8a-405, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle in the manner and minimum amounts specified in R426-15-204. All licensees shall:

(i) obtain insurance from an insurance carrier authorized to write liability coverage in Utah or through a self-insurance program;

(ii) report any coverage change to the Department within 60 days after the change; and

(iii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage.

(l) not be disqualified for any of the following reasons:

(i) violation of Subsection 26-8a-504; or

(ii) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license.

(2) A paramedic tactical rescue must be a public safety agency or have a letter of recommendation form a county or city law enforcement agency within the paramedic tactical rescue's geographic service area.

R426-14-301. Application, Department Review, and Issuance.

(1) An applicant desiring to be licensed or to renew its license shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-14-300 and the following:

(a) a detailed description and detailed map of the exclusive geographical area that it will serve;

(i) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(ii) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions of all geographical areas served in accordance with 26-8a-405.2 (2).

(b) for an applicant for a new service, documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(c) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(d) for renewal applications, a written assessment of field performance from the applicant's off-line medical director; and

(e) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(2) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district or unified fire authority holding such a license, may respond to a request for proposal if it complies with 26-8a-405(2).

(3) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2);

(c) issue a license to an applicant selected by a political subdivision in accordance with 26-8a-405.1(3);

(d) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certifies to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a-413(1) through (3); or

(e) issue a second four-year renewal license to a licensee selected by a political subdivision if:

(i) the political subdivision certifies to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a-413(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(4) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statutes and rules and a successful Department quality assurance review.

(5) A license may be issued for up to a four-year period. The Department may alter the length of the license to standardize renewal cycles.

(6) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-14-302. Selection of a Provider by Public Bid.

(1) A political subdivision that desires to select a provider through a public bid process as provided in 26-8a-405.1, shall submit its draft request for proposal to the Department in accordance with 26-8a-405.2(2), together with a cover letter listing all contact information. The proposal shall include all the criteria listed in 26-8a-405.1 and 405.2.

(2) The Department shall, within 14 business days of receipt of a request for proposal from a political subdivision, review the request according to 26-8a-405.2(2) and:

(a) approve the proposal by sending a letter of approval to the political subdivision;

(b) require the political subdivision to alter the request for proposal to meet statutory and rule requirements; or

(c) deny the proposal by sending a letter detailing the reasons for the denial and process for appeal.

R426-14-303. Application Denial.

(1) The Department may deny an application for a license or a renewal of a license without reviewing whether a license must be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) financial insolvency;

(k) failure to submit records and other data to the Department as required by R426-7;

(l) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(m) misuse of grant funds received under Section 26-8a-207; and

(n) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant that has been denied a license may appeal by filing a written appeal within thirty calendar days of the issuance of the Department's denial.

R426-14-400. Change in Service Level.

(1) A ground ambulance service licensee may apply to provide a higher level of non-911 ambulance or paramedic service. The applicant shall submit:

(a) the applicable fees; and

(b) an application on Department-approved forms to the Department.

(c) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(d) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service; and

(e) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director.

(2) If the Department determines that the applicant has demonstrated the ability to provide the higher level of service, it shall issue a revised license reflecting the higher level of service without making a separate finding of public convenience and necessity.

R426-14-401. Change of Owner.

A license and the vehicle permits terminate if the holder of a licensed service transfers ownership of the service to another party. As outlined in 26-8a-415, the new owner must submit, within ten business days of acquisition, applications and fees for a new license and vehicle permits.

R426-14-500. Aid Agreements.

(1) A ground ambulance service must have in place aid agreements with other ground ambulance services to call upon them for assistance during times of unusual demand.

(2) Aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;
(b) type of assistance required;
(c) circumstances under which the assistance would be given; and
(d) duration of the agreement.
(3) The parties shall provide a copy of the aid agreement to the emergency medical dispatch centers that dispatch the licensees.
(4) A ground ambulance licensee must provide all ambulance service, including standby services, for any special event that requires ground ambulance service within its geographic service area. If the ground ambulance licensee is unable or unwilling to provide the special event coverage, the licensee may arrange with a ground ambulance licensee through the use of aid agreements to provide all ground ambulance service for the special event.

R426-14-600. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
January 11, 2010 **26-8a**
Notice of Continuation July 28, 2009

R432. Health, Health Systems Improvement, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.
The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.
The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.
Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.
(1) A "satellite operation" is a health care treatment service that:
(a) is administered by a parent facility within the scope of the parent facility's current license,
(b) is in a location not contiguous with the parent facility,
(c) does not qualify for licensing under Section 26-21-2, and
(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.
(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:
(a) location of the remote facility (street address);
(b) capacity of the remote facility;
(c) license category of the parent facility;
(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);
(e) ancillary administrative and support services to be provided at the remote facility; and
(f) Uniform Building Code occupancy classification of the remote facility physical structure.
(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:
(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;
(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;
(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.
(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.
(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.
(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.
(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.
(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:
(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.
(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.
(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.
(3) The applicant shall submit the following:
(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;
(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and
(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;
(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):
(a) None of the persons has been convicted of a felony;
(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and
(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:
(i) subject of a patient care receivership action;
(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;
(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or
(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.
(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.
(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.
(b) The Department shall thereafter show the facility as

having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and banked beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient

funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity.

(b) change in name of facility.

(c) change in license category.

(d) change of license classification.

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. It may issue no more than one provisional license to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license is a license issued to a licensee if:

(1) the licensee meets the conditions attached to a provisional or conditional license;

(2) the licensee corrects the identified rule violations; or

(3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the

variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

R432-2-19. Change In Ownership.

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

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Notice of Continuation December 24, 2008	**26-21-11**
	26-21-12
	26-21-13

R432. Health, Health Systems Improvement, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, or Community Health Accreditation Program in lieu of the annual licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) annual and follow up inspections,

(b) complaint investigation,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular annual inspection shall apply.

R432-3-4. Statement of Findings.

(1) The Department or its designee may inspect each facility or agency at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(4) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(5) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

R432-3-5. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;

(b) who is the responsible person to monitor the correction is accomplished; and

(c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation,

the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed -upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients; or

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of $10,000 per violation.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-7. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to

renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

KEY: health facilities

January 5, 2010	**26-21-5**
Notice of Continuation December 24, 2008	**26-21-14 through 26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-10. Specialty Hospital - Long-Term Acute Care Construction Rule.
R432-10-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-10-2. Purpose.
The purpose of this rule is to establish construction standards for hospitals that provide services for the diagnosis, treatment or care of persons needing medical services and care in excess of services usually provided in a general acute hospital or skilled nursing home for chronic or long-term illness, injury or infirmity.

R432-10-3. General Design Requirements.
(1) Refer to R432-4-1 through R432-4-23.
(2) All fixtures in public and resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-10-4. General Construction, Patient Facilities.
(1) The requirements of R432-4-24 and the requirements of Sections 7 and 8 including the Appendix, of the Guidelines for Design and Construction of Hospital and Health Care Facilities 2001 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.
(2) The maximum number of beds on each nursing unit shall be 60.
(a) The minimum number of beds in a nursing unit shall be four.
(b) Rooms and spaces comprising the nursing unit shall be contiguous.
(3) At least two single-bed rooms, with a private toilet room containing a toilet, lavatory, and bathing facility, shall be provided for each nursing unit.
(a) The minimum patient room area shall be 120 feet.
(b) In addition to the lavatory in the toilet room, in new construction a lavatory or handwashing sink shall be provided in the patient room.
(c) Ventilation shall be in accordance with Table 8.1 of Guidelines with all air exhausted to the outside.
(4) The nurses' station shall have handwashing facilities located near the nurses' station and the drug distribution station. The nurses' toilet room, located in the unit, may also serve as a public toilet room.
(5) A nurse call system is not required in facilities that care for developmentally disabled or mentally retarded persons. With the prior approval of the Department, facilities which serve patients who pose a danger to themselves or others may modify the system to alleviate hazards to patients.
(6) Patient rooms shall include a wardrobe, closet, or locker having minimum clear dimensions of 22 inches deep by 36 inches wide, suitable for hanging full length garments.
(7) A clean workroom or clean holding room with a minimum area of 80 square feet for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities.
(a) The work counter and handwashing 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.
(b) A soiled workroom with a minimum area of 80 square feet which shall contain a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles and a linen receptacle.
(c) Handwashing sinks and work counters may be omitted in rooms used only for temporary holding of soiled, bagged materials.
(8) If a medication dispensing unit is used it shall be under visual control of staff, including double locked storage for controlled drugs.
(9) Clean Linen Storage.
(a) If a closed cart system is used it shall be stored in a room with a self closing door.
(b) Storage of a closed cart in an alcove in a corridor is prohibited.
(10) Each nursing unit shall have equipment to provide ice for patient treatment and nourishment.
(a) Ice making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.
(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.
(11) At least one room for toilet training, accessible from the nursing corridor, shall be provided on each floor containing a nursing unit.
(a) All fixtures in this room shall comply with the Americans with Disabilities Act Accessibility Guidelines.
(b) A toilet room, with direct access from the bathing area, shall be provided at each central bathing area.
(c) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.
(d) A handwashing fixture shall be provided for each toilet in each toilet room.
(12) Storage. There shall be an equipment storage room with a minimum area of 120 square feet for portable storage.
(13) Resident Support Areas Shall Include the Following:
(a) Occupational Therapy may be counted in the required space of Guidelines section 8.3, Resident Support Area.
(b) Physical Therapy, personal care room and public waiting lobbies may not be included in the calculation of space of Guidelines section 8.3, Resident Support Area.
(c) Storage space for recreation equipment and supplies shall be provided and secured for safety.
(d) There shall be a general purpose room with a minimum area of 100 square feet equipped with table, and comfortable chairs.
(e) A minimum area of ten square feet per bed shall be provided for outdoor recreation. Recreation areas shall be enclosed by a secure fence.
(14) An examination and treatment Room shall be provided except when all patient rooms are single-bed rooms.
(a) The examination and treatment room may be shared by multiple nursing units.
(b) The room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.
(c) The minimum allowable room dimension shall be ten feet.
(d) The room shall contain a lavatory or sink equipped for handwashing; work counter; storage facilities; and desk, counter, or shelf space for writing.
(15) A room shall be arranged to permit evaluation of patient needs and progress.
(a) The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.
(b) If psychological services are provided, then the unit shall contain an office and work space for testing, evaluation, and counseling.
(c) If social services are provided, then the unit shall contain office space for private interviewing and counseling.
(d) If vocational services are provided, then the unit shall contain office and work space for vocational training, counseling, and placement.
(e) Evaluation, psychological services, social services, and

vocational services may share the same office space when the owner provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(16) Pediatric and Adolescent Unit.

(a) Pediatric and adolescent nursing units shall comply with the spatial standards in section 7.5 of the Guidelines.

(b) There shall be an area for hygiene, toileting, sleeping, and personal care for parents if the program allows parents to remain with young children.

(c) Service areas in the pediatric and adolescent nursing unit shall conform to the standards of section 7.5.C. of the Guidelines and the following:

(i) Multipurpose or individual rooms shall be provided in the nursing unit for dining, education, and recreation.

(ii) A minimum of 20 square feet per bed shall be provided.

(iii) Installation, isolation and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of multipurpose rooms.

(iv) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but may not be shared with adult patient units.

(v) A patient toilet room, in addition to those serving bed areas, shall be conveniently located to each multipurpose room and to each central bathing facility.

(vi) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(d) At least one single-bed isolation room shall be provided in each pediatric unit. Each isolation room shall comply with the following:

(i) Room entry shall be through an adjacent work area which provides for aseptic control, including facilities separate from patient areas for handwashing, gowning, and storage of clean and soiled materials. The work area entry may be a separate, enclosed anteroom.

(ii) A separate, enclosed anteroom for an isolation room is not required but, when provided, shall include a viewing panel for staff observation of the patient from the anteroom.

(iii) One anteroom may serve several isolation rooms.

(iv) Toilet, bathing, and handwashing facilities shall be arranged to permit access from the bed area without entering or passing through the work area of the vestibule or anteroom.

(17) Rehabilitation therapy, Physical Therapy and Occupational Therapy areas shall include:

(a) Waiting areas to accommodate patients in wheelchairs, including room for turning wheelchairs.

(b) Storage space, with separate storage rooms for clean and soiled linen.

R432-10-5. General Construction.

(1) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing though building rooms or corridors.

(2) Grab bars and handrails shall comply with ADAAG and shall be installed in all toilet rooms.

(a) Handrails shall be provided on both sides of corridors used by patients.

(b) The top of the rail shall be 32 inches above the floor, except for special care areas.

(c) Ends of the handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Sound control shall be maintained as referred to in Table 1 in R432-5-12(5).

(4) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers may not be used.

(5) Signs. The following signs shall comply with ANSI A117.1 and be located in corridors:

(a) general circulation direction signs in corridors.

(b) identification sign or number at each door.

(c) emergency evacuation directional signs.

R432-10-6. Construction Features.

(1) Mechanical tests shall be conducted prior to the final Department construction inspection. Written test results shall be retained in facility maintenance files and available for Department review.

(2) Any insulation containing any asbestos is prohibited.

(3) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by patients.

(a) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by patients.

(b) Furnace and boiler rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to a temperature not to exceed 90 degrees F. When ambient outside air temperature is higher, maximum temperature may be 97 degrees F.

(c) A relative humidity between 30 percent and 60 percent shall be provided in all patient areas.

(d) Evaporative coolers may only be used in kitchen hood systems that provide 100% outside air.

(e) 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 from the isolation room may be recirculated into the building system.

(f) Supply and return systems shall be ducted. Common returns using corridors or attic spaces as return plenums are prohibited.

(g) The bottom of ventilation supply and return opening shall be at least three inches above the floor.

(4) Filtration shall be provided when mechanically circulated outside air is used see section 8.31.D5, of the Guidelines. All areas for inpatient care, treatment, or diagnosis, and those areas providing direct service or clean supplies shall have a minimum of one filter bed with an efficiency of 80.

(5) Fans and dampers shall be interconnected so that activation of dampers will automatically shut down fans.

(a) Smoke dampers shall be equipped with remote control reset devices.

(b) Manual reopening is permitted where dampers are located for convenient access.

(6) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat actuated fan controls. Cleanout openings shall be provided every 20 feet in horizontal sections of the duct systems serving these hoods.

(7) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other non-patient areas.

(8) Handwashing facilities shall comply with section 8.11.E1 of the Guidelines and include the following:

(a) Handwashing facilities shall be arranged to provide sufficient clearance for single-lever operating handles.

(b) Handwashing facilities shall be installed to permit use by persons in wheelchairs.

(c) Fixtures in patient use areas shall be equipped with cross or tee handles or single lever operating handles.

(9) Dishwashers, disposers and appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

(10) Kitchen grease traps shall be located and arranged to permit easy access without the need to enter the food preparation or storage area.

(11) Hot water systems. Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic mixing valves. Mixing valves may be installed on the recirculating system or on individual inlets to appliances.

(12) Drainage Systems. Building sewers shall discharge

into community sewerage except, where such a system is not available, the facility shall treat its sewage in accordance with local requirements and Department of Environmental Quality requirements.

(13) Piping and Valve systems. All piping and valves in all systems, except control line tubing, shall be labeled to show content of line and direction of flow. Labels shall be permanent type, either metal or paint, and shall be clearly visible to maintenance personnel.

(14) Oxygen and suction systems shall be installed in accordance with the requirements of section 7.31.E5 of the Guidelines and Table 7.5 of the Guidelines.

(15) Electric materials shall be new and listed as complying with standards of Underwriters Laboratories, Inc., or other equivalent nationally recognized standards. The owner shall provide written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(16) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with at least the mid range requirements shown in Tables 1A and 1B of Illuminating Engineering Society of North America IESNA, publication RP-29-95, Lighting for Health Care Facilities, 1995 edition. Automatic Emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(17) Receptacles shall comply with section 8.32.A4c of the Guidelines and shall include:

(a) Each examination and work table shall have access to minimum of two duplex outlets.

(b) Receptacle cover plates on electrical receptacles supplied for the emergency system shall be red.

(18) Emergency Electrical Service shall comply with section 7.32H of the Guidelines and shall include:

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch as defined in 517-33 of the National Electric Code NFPA 70;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient room;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

(c) fuel storage capacity shall permit continuous operation for 48 hours.

R432-10-7. Excluded Section of the Guidelines.

The following sections of the Guidelines do not apply:

(1) Parking, Section 7.1.D.
(2) Nursing Unit, Section 7.2.
(3) Critical Care Unit, Section 7.3.
(4) Newborn Nurseries, Section 7.4.
(5) Psychiatric Nursing Unit, Section 7.6.
(6) Surgical Suite, Section 7.7.
(7) Obstetrical Facilities, Section 7.8.
(8) Emergency Services, Section 7.9.
(9) Imaging Suite, Section 7.10.
(10) Nuclear Medicine, Section 7.11.
(11) Morgue, Section 7.15.
(12) Linen Services, Section 7.23.
(13) Parking, Section 8.1.F.
(14) Linen Services, Section 8.11.
(15) Mechanical Standards, Section 8.31.
(16) Electrical Standards, Section 8.32.
(17) Bathing facilities, Section 8.2.C.11.
(18) Clean utility rooms, Section 8.2.C5.
(19) Soiled Utility rooms, Section 8.2.C6.
(20) Windows, Section 8.2.B3.

R432-10-8. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 **26-21-5**
Notice of Continuation November 24, 2009 **26-21-2.1**
26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-11. Orthopedic Hospital Construction.
R432-11-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-11-2. Purpose.
The purpose of this rule is to establish construction standards for a specialty hospital for orthopedic services.

R432-11-3. General Design Requirements.
(1) See R432-4-1 through R432-4-22.
(2) All fixtures in resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-11-4. General Construction.
See R432-4-23 with the following modifications:
(1) Corridors in patient use areas shall be a minimum eight feet wide.
(2) Handrails shall be provided on both sides of corridors and hallways used by patients and meet the Americans with Disabilities Act Accessibility Guidelines requirements. The top of the rail shall be 34 inches above the floor except for areas serving children and other special care areas.
(3) Plumbing, including medical gas and suction systems are required.
(4) An emergency electrical service is required. An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:
(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;
(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;
(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;
(d) telephone;
(e) nurse call;
(f) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;
(g) one duplex convenience outlet in each patient room;
(h) one duplex convenience outlet at each nurse station;
(i) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients;
(j) fuel storage capacity shall permit continuous operation for at least 48 hours.
(5) If installed, fixed and mobile X-ray equipment shall comply with Articles 517 and 660 of NFPA 70, which is adopted and incorporated by reference.

R432-11-5. General Construction. Patient Service Facilities.
(1) Requirements of R432-4-24 and the requirements of Section 7 including the Appendix of Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.
(2) Nursing Units shall meet the following:
(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.
(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 140 square feet in single-bed rooms and 125 square feet per bed in multiple-bed rooms. The listed areas are minimum and do not prohibit larger rooms.
(3) Imaging Suites. Imaging facilities for diagnostic procedures, include the following: radiology, mammography, computerized scanning, ultrasound and other imaging techniques.
(a) Imaging facilities may be provided within the facility or through contractual arrangement with a qualified radiology service or nearby hospital.
(b) If imaging facilities are provided in-house, they shall meet the requirements for an imaging suite defined in Guidelines for Design and Construction of Hospital and Health Care Facilities, section 7.10.
(4) Laboratory Services.
(a) Laboratory space and equipment shall be provided in-house for testing blood counts, urinalysis, blood glucose, electrolytes, blood urea nitrogen (BUN), and for the collection, processing, and storage of specimens.
(b) In lieu of providing laboratory services in-house, contractual arrangements with a Department-approved laboratory shall be provided. Even when contractual services are arranged, the facility shall maintain space and equipment to perform the tests listed in R432-105-5(7)(a).
(5) Pharmacy Guidelines.
(a) The size and type of services provided in the pharmacy shall depend on the drug distribution system chosen and whether the facility proposes to provide, purchase, or share pharmacy services. A description of pharmacy services shall be provided in the functional program.
(b) There shall be a pharmacy room or suite, under the direct control of staff, which is located for convenient access and equipped with appropriate security features for controlled access.
(c) The room shall contain facilities for the dispensing, basic manufacturing, storage and administration of medications, and for handwashing.
(d) In lieu of providing pharmacy services in-house, contractual arrangements with a licensed pharmacy shall be provided. If contractual services are arranged, the facility shall maintain space and basic pharmacy equipment to prepare and dispense necessary medications in back-up or emergency situations.
(e) If additional pharmacy services are provided, facilities shall comply with requirements of Guidelines section 7.17.
(6) Linen Services shall comply with R432-4-24(7).
(7) Patient bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each eight beds not otherwise served by bathing facilities within individual patient rooms.
(a) Each bathtub or shower shall be in an individual room or enclosure adequately sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.
(b) Showers in central bathing facilities shall have a floor area of at least four feet square, be curb free, and be designed for use by a wheelchair patient in accordance with ADAAG.
(c) At least one island-type bathtub shall be provided in each nursing unit.
(8) Toilet Facilities. A toilet room, with direct access from the bathing area shall be provided at each central bathing area.
(a) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.
(b) A handwashing fixture shall be provided for each toilet in each toilet room.
(c) Fixtures shall be wheelchair accessible.
(9) Patient Day Spaces.
(a) The facility shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for the first 100 beds and 27 square feet per bed for all beds in excess of 100.
(b) In addition to the required space defined for inpatients,

the facility shall include a minimum of 200 square feet for outpatient and visitors when dining is part of a day care program. If dining is not part of a day care program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(c) Enclosed storage space for recreation equipment and supplies shall be provided in addition to the requirements of R432-105-4.

(10) Examination and Treatment Room. An examination and treatment room shall be provided except when all patient rooms are single-bed rooms.

(a) An examination and treatment room may be shared by multiple nursing units.

(b) When provided, the room shall have a minimum floor area of 120 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum floor dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(11) Consultation Room. A consultation room, arranged to permit an evaluation of patient needs and progress, shall be provided. The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(12) Surgical Unit. If surgical services are offered, facilities shall be provided in accordance with the Guidelines.

R432-11-6. Excluded Guideline Sections.

The following sections of the Guidelines do not apply:

(1) Parking, section 7.1.D.
(2) Critical Care Unit, Section 7.3.
(3) Newborn Nurseries, Section 7.4.
(4) Psychiatric Nursing Unit, Section 7.6.
(5) Obstetrical Facilities, Section 7.8.
(6) Emergency Services, Section 7.9.
(7) Nuclear Medicine, Section 7.11.
(8) Morgue, Section 7.16.
(9) Linen Services, Section 7.23.

R432-11-7. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 **26-21-5**
Notice of Continuation November 24, 2009 **26-21-2.1**
26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-12. Small Health Care Facility (Four to Sixteen Beds) Construction Rule.
R432-12-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-12-2. Purpose.

This rule defines construction standards for small health care facilities which are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability to exit a building unassisted in an emergency.

R432-12-3. General Design Requirements.

Refer to R432-4-1 through R432-4-23.

R432-12-4. General Construction Requirements.

(1) Table 1 identifies the levels of care and construction requirements which apply.

TABLE 1
LEVELS OF CARE AND CONSTRUCTION REQUIREMENTS SUMMARY

	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
No. residents	1 plus	4-16	4-16	6-16
Types of Facilities	SNF ICF ICF/MR (17 plus) Mental Health Facility (17 plus)	ICF/MR Home for Aging Social Rehab. Health Care Nursing Mental Health Facility	ICF/MR Correction Home Mental Health Facility	ICF/MR Mental Health Facility Home for Aging Social Rehab.
Staff Availability or Coverage	24 hours/ day	24 hours/ day	24 hours/ day	24 hours/ day
Licensed Nursing Hours	16-24	0-16	0-16	0-16
Type of Service				
medical nursing	yes	yes	yes	yes
dietary	yes	yes	yes	yes
social svc	yes	yes	as required	as required
phy therapy	yes	as required	as required	as required
rec therapy	yes	as required	as required	as required
other therapy	yes	as required	as required	as required
Resident Capable of Self Preservation Unassisted	No, they are non ambulatory non-mobile	No, they are non ambulatory non-mobile	Yes, they are ambulatory mobile	Yes, they are ambulatory mobile
Resident Exit Ability in an Emergency	restricted, physical or mental disability and medical condition	restricted, physical or mental disability	restricted, chemical or physical restraints	not restricted
Accessible	100% 100% if	10% or Physical Rehab.	10%	10%Rooms
Construction Requirements code or regulation	NFPA 101	NFPA 101	NFPA 101	Utah Fire Prevention Board Rules R710-3; IBC R-4 occupancy
fire rating of const	1 hour	1 hour	1 hour	No requirement
sprinkler	yes	yes	yes	consider res. mobility
smoke detector	yes	yes	yes	yes
manual fire alarm	yes	yes	yes	yes
above 3 systems interconnected	yes	yes	yes	no
corridor	8 feet	6 feet	5 feet	As required by IBC
resident room door width	44 inch	44 inch	36 inch	36 inch
nurse call system	yes	yes	optional	yes

(2) General Requirements.

(a) Level I facilities shall meet the Nursing Facility Construction standards in R432-5.

(b) Level II and III facilities shall meet the construction and design requirements identified in this section, unless specifically exempted.

(c) Level IV facilities shall meet the Assisted Living Facility Type I Construction standards in R432-6.

(d) Level I, II, III and IV facilities shall comply with the Americans with Disabilities Act Accessibility Guidelines.

(e) Level II and III facilities shall conform to the life safety code requirements of NFPA 101, Chapter 18 as specified in Sections 12.1.3, which is adopted and incorporated by reference.

(f) Level IV facilities shall conform to the fire safety provisions of R432-710-3.

R432-12-5. Common Areas.

There shall be a common room or rooms for dining, sitting, meeting, visiting, recreation, worship, and other activities that is of sufficient space or separation to promote and facilitate the activity without interfering with concurrent activities or functions.

(1) There shall be at least 30 square feet computed per license bed capacity but no less than a total of 225 square feet.

(2) There shall be sufficient space for necessary equipment and storage of recreational equipment and supplies.

R432-12-6. Resident Rooms.

(1) The maximum room capacity shall be two residents. Provisions shall be made for individual privacy.

(2) There shall be at least 100 square feet for a single-bed room and 160 square feet in shared rooms, exclusive of toilets and closets.

(a) Minor encroachments such as columns, lavatories, and door swings may be ignored in determining space requirements if function is not impaired.

(b) In a facility licensed prior to 1977, the Department may grant a variance, pursuant to R432-2-18, to allow 80 square feet per bed for a single-bed room and 60 square feet per bed for a multiple-bed room.

(3) In multiple-bed rooms there shall be enough clearance between beds to allow movement of beds, wheelchairs, and other equipment without disturbing residents.

(4) No room commonly used for other purposes shall be used as a sleeping room for any resident. This includes any hall, unfinished attic, garage, storage area, shed, or similar detached building.

(5) No bedroom may be used as a passageway to another room, bath, or toilet.

(6) Bedrooms shall open directly into a corridor or common living area, but not into a food-preparation area.

(7) Bedrooms shall not be located in a basement or on an upper floor unless residents have access to one exit from that level leading directly to the exterior at grade level.

(8) Each bedroom shall be provided with light and ventilation by means of an operable window which opens to the outside or to a court that opens to the sky. Where the window requires the use of tools or keys for operation, such devices shall be stored in a prominent location on each floor convenient for staff use.

(9) Each resident shall have a wardrobe, closet, or space suitable for hanging clothing and personal belongings with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall. Space accommodations shall be provided within each resident's room. Facilities serving infants or children may substitute a chest of drawers for the closet.

R432-12-7. Toilet and Bathing Facilities.

Toilet rooms and bathrooms shall be mechanically exhausted, conveniently located, and accessible to, and usable by all persons accepted for care.

(1) There shall be one toilet and washbasin on each floor for each four occupants, including staff and live-in family. A facility licensed for eight beds or more shall have distinct and separate toilet and bathing facilities for live-in family and staff.

(2) There shall be at least one bathtub or shower for each six residents.

(a) In a multi-story building there shall be at least one bathtub or shower on each floor that has resident bedrooms.

(b) Each resident shall have access to at least one bathtub and one shower.

(c) There shall be at least one shower or bathtub which opens from a corridor designed for use by resident using a wheelchair with room for staff assistance that meets ADAAG standards.

(3) Each central shared bathroom shall have a toilet and washbasin.

(4) Toilet and bathing facilities may not open directly into food preparation areas.

(5) There shall be adequate provision for privacy and safety, including grab bars, in accordance with ADAAG, at each toilet, tub, and shower used by residents.

(6) All toilets, showers, and tub facilities shall have walls of impermeable, cleanable, and easily sanitized surfaces.

R432-12-8. Service Areas.

There shall be adequate space and equipment for the following services or functions. Except where the word "room" or "office" is used, service may be provided in a multi-purpose area.

(1) Administrator's office with space for private interviews, storage of files and records, and a public reception or information area.

(2) Telephone area for private use by residents or visitors.

(3) A control station with a well-lighted desk, and equipment for keeping records and supplies.

(4) Closets or compartments for the safekeeping of staff's personal items.

(5) Medication preparation and storage area, including locked drug cabinets, work counter, refrigerator, and sink with running water located near the control station.

(6) Clean linen storage area.

(7) Soiled workroom mechanically ventilated to the outside. In a Level II facility this room shall contain a clinical sink or equivalent flushing rim fixture, handwashing facilities, work counter, waste and soiled linen receptacle.

(8) Housekeeping room, which in large facilities over eight residents shall contain a service sink.

(9) Equipment room or separate building for mechanical and electrical equipment.

(10) Storage room for maintenance supplies.

(11) General storage area within the facility or in a separate building convenient for daily access with at least five square feet of storage per bed;

(12) Area outside the facility for sanitary storage and disposal of waste.

R432-12-9. Dietary Services.

Food service facilities and equipment shall comply with the Utah Department of Health Food Service Sanitation Regulations. According to the size of the facility and services offered, there shall be adequate space and equipment for the following:

(1) Food preparation;

(2) Handwashing located in the food preparation area;

(3) Serving and distributing resident meals;

(4) Dining space for residents, staff, and visitors;

(5) Dishwashing, receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to use areas;

(6) Storage, including cold storage and space for at least a seven-day supply of staple foods and a three-day supply of perishable foods, shall be maintained in the facility.

R432-12-10. Linen Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for resident care. Processing may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(2) The capacity of central storage shall be sufficient for four days operation or two normal deliveries, whichever is greater.

(3) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(4) Provisions shall be made to keep soiled linen separate from clean linen.

(5) Provision shall be made for storage of laundry supplies.

(6) Equipment shall be arranged to permit an orderly work flow and reduce cross traffic that may mingle clean and soiled operations.

(7) At least one washing machine and dryer, and ironing equipment shall be available for use by residents who wish to do their personal laundry.

R432-12-11. Nurse Call System.

A nurse call system is required in Level I, II and IV facilities. A nurse call system is optional in Level III facilities.

(1) Each resident's room shall be served by at least one calling station and each bed shall be provided with a call button including operating switch and cord from the wall station to each bed.

(2) Two call buttons serving adjacent beds may be served by one calling station.

(3) Calls shall activate a visible signal in the corridor at the resident's door and the control station.

(4) The system shall be designed so that a signal light activated at the resident's station will remain lighted until turned off at the resident's calling station.

(5) A system that provides two-way voice communication shall be equipped at each calling station with an indicator light

that remains lit as long as the voice circuit is operating.

R432-12-12. Rehabilitation Therapy.

A facility that offers on-site specialized rehabilitation services shall provide space and equipment necessary to meet the intent of the approved program. The following shall be available in the facility:

(1) Supplies and equipment storage, including separate clean and soiled linen;

(2) Convenient handwashing facilities;

(3) Space and equipment to carry out specific types of therapy;

(4) Provision for resident privacy;

(5) Convenient access to a room that can be used to train and educate staff and residents;

(6) Dressing rooms for residents.

R432-12-13. Doors and Windows.

(1) Doors to all rooms containing bathtubs, sitz baths, showers and water closets for resident use shall be equipped with hardware which may be secured for privacy yet permit emergency access from the outside without the use of keys.

(2) Each room, including all resident toilet rooms and bathing rooms that may be used by residents, staff, or employees confined to wheelchairs, shall have at least one door with a minimum clear width of 34 inches.

(3) Resident-room doors and exit doors shall be at least 36 inches wide, defined by the width of the door leaf.

(4) Thresholds and expansion-joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts and to prevent tripping.

(5) Every room intended for 24-hour occupancy shall have a window that opens to the building exterior or to a court that is open to the sky.

(6) Windows and outer doors shall have insect screens.

R432-12-14. Grab Bars and Handrails.

(1) Grab bars shall meet the requirements of ADAAG.

(2) In Level I and II facilities, there shall be handrails on both sides of all corridors normally used by residents. Handrail profiles shall be graspable in accordance with NFPA 101 Chapter 7, which is adopted and incorporated by reference and the Americans with Disabilities Act Accessibility Guidelines.

(3) Ends shall be returned to the wall or otherwise arranged to minimize potential for injury.

R432-12-15. Lavatories and Plumbing Fixtures.

(1) All lavatories used by residents shall be trimmed with valves, with cross, tee or single lever devices.

(2) Showers and tubs shall have slip-resistant surfaces.

(3) Lavatories shall be securely anchored to withstand a vertical load of not less than 250 pounds on the front of the fixture.

(4) A mirror shall be provided at each handwashing facility except as otherwise noted.

(a) The tops and bottoms of mirrors may be at levels for use by sitting and standing individuals, or additional mirrors may be provided for residents using a wheelchair.

(b) One separate full-length mirror in a single room may serve for wheelchair occupants in that room.

R432-12-16. Ceilings.

(1) Ceiling height in the facility shall be a minimum of eight feet with the following exceptions:

(a) Rooms containing ceiling-mounted equipment shall have adequate height for the proper functioning of that equipment.

(b) Ceilings in corridors, storage rooms, and toilet rooms shall be at least seven feet ten inches.

(c) Building components and suspended tracks, rails and pipes located in the path of normal traffic may not be less than seven feet above the floor.

(2) Where existing conditions make the above impractical, clearances shall be sufficient to avoid injury and at least six feet four inches above the floor.

R432-12-17. Heat and Noise Reduction.

(1) Rooms containing heat producing equipment such as a furnace, heater, washer, or dryer shall be insulated and ventilated to prevent floors of overhead occupied areas and adjacent walls from exceeding a temperature of 10 degrees Fahrenheit (6 degrees C) above the ambient room temperature of such occupied areas.

(2) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated may not be located directly over resident-bed areas unless special provisions are made to minimize such noise.

(3) Sound transmission limitations shall conform to Table 2.

TABLE 2
SOUND TRANSMISSION LIMITATIONS
IN LONG-TERM CARE FACILITIES

	AIRBORNE SOUND TRANSMISSIONS Class (STC)(a)	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room(b)	40	40
Service areas to residents' room(c)	45	45

(a) Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above residents' rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-12-18. Floor, Wall, and Ceiling Finishes.

(1) Floor materials shall be easily cleanable and appropriate for the location.

(a) Floors and floor joints in areas used for food preparation and food assembly shall be water-resistant, grease proof, and resistant to food acids.

(b) In all areas subject to frequent wet cleaning, floor materials may not be physically affected by germicidal cleaning solutions.

(c) Floors that are subject to traffic while wet, (such as shower and bath areas, kitchen and similar work areas), shall have a non-slip surface.

(d) Carpet and carpet pads in resident areas shall be applied with adhesive or stretched taut and maintained without loose edges or wrinkles which might create hazards or interfere with the operation of wheelchairs, walkers, or wheeled carts.

(2) Wall bases in areas subject to wet cleaning shall be coved and tightly sealed.

(3) Wall finishes shall be washable.

(a) Walls in the immediate area of plumbing fixtures shall be smooth and moisture resistant.

(b) Finish, trim, walls, and floor constructions in dietary and food preparation and storage areas may not have spaces that may harbor rodents and insects.

(4) Floor and wall openings for pipes, ducts, and conduits shall be sealed tightly to resist fire and smoke and to minimize

entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(5) All exposed ceilings and ceiling structures in resident and staff work areas shall have finishes that are readily cleanable with ordinary housekeeping equipment. Ceilings in the dietary area and other areas where dust fallout might create a potential problem shall have a finished ceiling that covers all conduits, piping, duct work, and exposed construction systems.

R432-12-19. Heating and Cooling.

There shall be adequate and safe heating and cooling equipment to maintain comfortable temperatures in the facility.

(1) The heating system shall be capable of maintaining temperatures of 80 degrees F (27 degrees C) in areas occupied by residents.

(2) The cooling system shall be capable of maintaining temperatures of 72 degrees F (22 degrees C) in areas occupied by residents.

R432-12-20. Ventilation.

(1) All rooms and areas in the facility shall have provision for positive ventilation.

(a) While natural window ventilation for nonsensitive areas and resident rooms may be utilized where weather permits, mechanical ventilation shall be provided for interior areas and during periods of temperature extremes.

(b) Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service.

(2) Fresh air intakes shall be located as far as possible from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or from areas which may collect vehicular exhaust or other noxious fumes.

(3) Furnace rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to an Effective Temperature of 90 degrees F (32.5 degrees C). When the ambient outside air temperature is higher than 90 degrees F, then the maximum temperature may be 97 degrees F (36 degrees C).

(4) Exhaust hoods in food-preparation centers shall comply with R392, the Utah Department of Health Food Service Sanitation Regulations. All hoods over cooking ranges shall be equipped with grease filters.

(5) Non-resident as well as resident areas where specific requirements are not given shall be ventilated in accordance with ASHRAE Standard 62-1981, "Ventilation for Acceptable Indoor Air Quality Including Requirements for Outside Air."

(6) Air from areas with odor problems, including toilet rooms, baths, soiled linen storage and housekeeping rooms, shall be exhausted to the outside and not recirculated.

(7) In Level II facilities, fans and dampers shall be interconnected so that activation of dampers will automatically shut down all but exhaust fans.

(8) Supply and return systems shall be in duct. Common returns using corridors or attic spaces as plenums are prohibited.

R432-12-21. Plumbing and Hot Water Systems.

(1) Water supply systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(2) Water distribution systems shall be arranged to provide for continuous hot water at each hot water outlet.

(3) Hot water provided to resident tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic-mixing valves at appropriate temperatures for comfortable use within a range of 105 to 115 degrees F. These valves may be installed on the recirculating system or on individual inlets to appliances.

(4) As a minimum, water heating systems shall provide capacity at temperatures and amounts indicated in Table 3, Hot Water Use. Water temperature is taken at the point of use or inlet to the equipment.

TABLE 3
HOT WATER USE

	Clinical	Dietary(1)	Laundry
Gallons per Hour per Bed(a)	3	2	2
Temperature (C)(b)	43	49	71(b)
Temperature (F)(b)	105	120	160(b)

(1) Provisions shall be made to provide 180 degree F (82 degree C) rinse water at warewasher (may be by separate booster).

(a) Quantities indicated for design demand of hot water are for general reference minimums and may not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design shall also be affected by temperatures of cold water used for mixing, length of run and insulation relative to heat loss, etc.

(b) Provisions shall be made to provide 160 degree F (71 degree C) hot water at the laundry equipment when needed.

R432-12-22. Drainage Systems.

(1) Drainage piping may not be installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities, food storage areas, central services, and other sensitive areas. Where overhead drain piping is unavoidable in these areas, as may occur in existing facilities, special provision shall be made to protect the space below from possible leakage, condensation, or dust particles.

(2) Building sewers shall discharge into a community sewerage system. Where such a system is not available, the facility shall treat its sewage in accordance with local and state regulations.

R432-12-23. Electrical Systems.

(1) All electrical materials shall be tested and approved by Underwriters Laboratory.

(2) The electrical installations, including alarm and nurse call system, if required, shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes.

(3) Switchboards and Power Panels.

(a) The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.

(b) The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and located in a dry, ventilated space.

(c) Overload protection devices shall operate properly in the ambient room temperatures, except for existing Level IV facilities.

(d) Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve.

(4) Lighting. All spaces within buildings that house people, machinery, equipment, or approaches to buildings shall have fixtures for lighting. (See Table 4.)

(a) Resident rooms shall have general and night lighting.

(i) A reading light shall be provided for each resident.

(ii) Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.

(iii) At least one night light fixture shall be controlled at the entrance to each resident room.

(iv) All controls for lighting in resident areas shall operate quietly.

(b) Parking lots shall have fixtures for lighting to provide light at levels recommended in the the Illuminating Engineering Society of North America (IESN) Lighting for Parking

Facilities (RP-20-1998.

(c) Lighting levels shown in Table 4 shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served.

TABLE 4
SMALL HEALTH CARE FACILITIES LIGHTING STANDARDS

Physical Plant Area	MINIMUM FOOT-CANDLES Level I, II, III Facilities	Level IV Facilities
Corridors		
Day	20	15
Night	10	10
Exits	20	20
Stairways	20	20
Nursing Station		
General	30	30
Charting	75	75
Med. Prep.	75	75
Pt./Res. Room		
General	10	10
Reading/Mattress Level	30	30
Toilet area	30	30
Lounge		
General	10	10
Reading	30	30
Recreation	30	30
Dining	30	30
Laundry	30	30

Based on lighting guidelines published in "Lighting for Hospitals and Health Care Facilities", Illuminating Engineering Society of North America, 1995 edition.

(5) Each resident room shall have duplex grounding type receptacles as follows:

(a) one located on each side of the head of each bed;

(b) one for television, if used; and

(c) one on each other wall.

(6) Receptacles may be omitted from exterior walls where construction would make installation impractical.

(7) Duplex grounded receptacles for general use shall be installed in all corridors.

R432-12-24. Emergency Power System.

(1) Facilities that provide care for persons who require electrically operated life-support systems, or when required by Table 1, shall be equipped with an emergency power system.

(2) The following services shall be connected to the emergency generator Life Safety Branch as defined in section 517-32, critical branch as defined in 517-33 and Equipment systems defined its 517-34 of the National Electric Code NFPA 70, which is adopted and incorporated by reference.

(3) Power need not be provided to all building heating and ventilation equipment if it is provided to a common area sufficient in size to accommodate temporary beds on a short-term emergency basis.

(4) Automatic transfer switches shall transfer essential electrical loading to the circuits described above within 10 seconds of any interruption of normal power.

(5) The emergency generator shall be fueled with a storable fuel source such as diesel fuel, gasoline, or propane. At least 48 hours of fuel shall be available.

(6) All other facilities shall make provision for essential emergency lighting and heating during an emergency to meet the needs of residents. All emergency heating devices shall be approved by the local Fire Marshal.

R432-12-25. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 **26-21-5**
Notice of Continuation November 24, 2009

R432. Health, Health Systems Improvement, Licensing.
R432-13. Freestanding Ambulatory Surgical Center Construction Rule.
R432-13-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-13-2. Purpose.
The purpose of this rule is to establish construction and physical plant standards for the operation of a freestanding surgical facility that provides surgical services to patients not requiring hospitalization.

R432-13-3. General Design Requirements.
(1) Ambulatory Surgical Centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of the Guidelines for Design and Construction of Hospital and Health Care Facilities, Section 9.2., 9.5 and 9.9 including the Appendix, 2001 edition (Guidelines). Where a modification is cited, the modification supersedes conflicting requirements of R432-4 or the Guidelines.
(2) Ambulatory Surgical Centers shall consist of at least two Class C operating rooms, as outlined in the Guidelines section 9.5.F2, and support facilities.
(3) Ambulatory Surgical Centers shall be equipped to perform general anesthesia. Flammable anesthetics may not be used in Ambulatory Surgical Centers.
(4) Ambulatory Surgical Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, Chapter 20, shall be physically separated in accordance with requirements of the local building official having jurisdiction.
(a) The facility shall have at least two exits leading directly to the exterior of the building.
(b) Design shall preclude unrelated traffic through units or suites of the licensed facility.

R432-13-4. General Construction, Patient Facilities.
(1) Adequate sterile supplies shall be maintained in the facility to meet the maximum demands of one day's case load.
(2) Operating rooms for cystoscopic procedures shall comply with Section 7.7.A4 of the Guidelines.
(3) A toilet room shall be readily accessible to recovery rooms and recovery lounge.
(4) Change areas shall comply with Guidelines subsection 9.5.F5.(i) and shall be arranged to accommodate a one way traffic pattern enabling personnel to change and directly enter the operating room corridor.
(5) Special or additional service areas such as radiology, if required by the functional program, shall comply with the requirements of the General Hospital Rules, R432-100.

R432-13-5. General Construction.
(1) The administration and public areas which are not part of the Ambulatory Surgical Center exiting system, may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.
(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.
(3) An elevator shall be provided when an ambulatory surgical center is located on a level other than at grade. The minimum inside dimensions of the cab shall be at least 5'8" wide by 8'5" deep with a minimum clear door width of 3'8".
(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.
(5) The facility shall provide for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using procedures established by the Utah Department of Environmental Quality and the local health department having jurisdiction.
(6) All rooms shall be mechanically ventilated.
(7) Access to medical gas supply and storage areas shall be arranged to preclude travel through clean or sterile areas. There shall be space for enough reserve gas cylinders to complete at least one routine day's procedures.
(8) An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:
(a) life safety branch as defined in 517-32 of the National Electric Code NFPA 70, 1999 edition;
(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, 1999 edition;
(c) equipment system as defined in 517-34 of the National Electric Code NFPA 70, 1999 edition.
(9) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation shall be provided.
(10) Lighting shall comply with R432-4-23(21)(a).

R432-13-6. Extended Recovery Care Unit.
(1) A facility that provides extended recovery services shall maintain a patient care area that is distinct and separate from the post-anesthesia recovery area. The patient care area shall provide the following:
(a) a room or area that ensures patient privacy, including visual privacy;
(b) a minimum of 80 square feet of space for each patient bed with at least three feet between patient beds and between the sides of patient beds and adjacent walls.
(c) a nurse call system at each patient's bed and at the toilet, shower and bathrooms, which shall transmit a visual and auditory signal to a centrally staffed location which identifies the location of the patient summoning help;
(d) a patient bathroom with a lavatory and toilet;
(e) oxygen and suction equipment;
(f) medical and personal care equipment necessary to meet patient needs.
(2) A separate food nutrition area which shall include a counter, sink, refrigerator, heating/warming oven or microwave, and sufficient storage for food items.

R432-13-7. Exclusions to Guidelines.
The following sections of the Guidelines do not apply to Freestanding Surgical Center construction:
(1) Parking, Section 9.5.C.
(2) Waste Processing Systems, Section 9.2.G3.

R432-13-8. Penalties.
The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 **26-21-5**
Notice of Continuation November 24, 2009 **26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-14. Birthing Center Construction Rule.
R432-14-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of sections 9.2 and 9.7 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition including the Appendix (Guidelines) and are adopted and incorporated by reference.

(2) Birthing Centers shall consist of at least two, but not more than five birthing rooms.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) To qualify for licensure, regardless of size, a Birthing Center shall be constructed in accordance with NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies.

(5) Birthing Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, Chapter 20, shall be physically separated in accordance with requirements established by the local building official having jurisdiction and shall have at least two exits leading directly to the exterior of the building.

(6) Administration and public areas that are not part of the Birthing Center exiting system may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(7) A Birthing Center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the Birthing Center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of sections 9.2 and 9.7 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) When used in this rule, "room or office" 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.

(4) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(5) Patient rooms and service areas shall be grouped to form a physically defined service unit.

(6) Spaces shall be provided for each of the required services.

(7) Interior finishes, lighting, and furnishings reflect a residential rather than an institutional setting.

(8) Maximum room occupancy shall be one mother and her newborn infant or infants.

(9) Each birthing room shall have a window in accordance with R432-4-23(5). Windows with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(10) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(11) A toilet room with direct access from the birthing room shall be accessible to each birthing room.

(a) The toilet room shall contain a toilet, a lavatory, and a shower or tub.

(b) A toilet room may serve two patient rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADAAG.

(d) Each birthing room shall be equipped with a lavatory for handwashing in addition to the lavatory in the toilet room. If the lavatory is equipped with wrist blades, it may be used for scrubbing.

(12) Newborn infant resuscitation facilities, remote from facilities serving the mother, including electrical outlets, oxygen, and suction shall be immediately available to each birthing room in addition to resuscitation equipment provided for the mother.

(13) A separate room for storage of maintenance materials and equipment shall be provided.

(a) The room may serve as a maintenance office with storage for maintenance files, facility drawings, and operation manuals.

(b) The storage room shall be in addition to the required janitors closet.

(14) Special surgical lighting is not required.

(15) An examination light shall be provided in each patient room. The light, if portable, shall be immediately accessible.

(16) An emergency electrical service is connected to an on-site emergency generator is required.

(a) Services shall be connected to the emergency generator to include:

(i) fire alarm system;

(ii) telephone;

(iii) nurse call;

(iv) one duplex convenience outlet in each patient room located to allow use of a portable examination light;

(v) one duplex convenience outlet at each nurse station;

(vi) heating system;

(vii) emergency lighting system.

(b) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation.

R432-14-5. Sections of the Guidelines which are Excluded.

The following sections of the Guidelines do not apply:

(1) Parking, Section 9.7A, subsection 9.7B.2., and subsection 9.7C.2.

(2) Radiology, Section 9.2.C.

(3) Laboratory, Section 9.2.D.

(4) General Purpose Examination Rooms, Subsection 9.2.B1.

(5) Special Purpose Examination Rooms, Subsection 9.2.B2.

(6) Treatment Rooms, Subsection 9.2.B3.

(7) Observation Rooms, Subsection 9.2.B4.

R432-14-6. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas denied if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 **26-21-5**
Notice of Continuation November 24, 2009 **26-21-16**

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 $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
January 5, 2010 26-21-5
Notice of Continuation February 11, 2008 26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-30. Adjudicative Procedure.
R432-30-1. Purpose.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-30-2. Definitions.

(1) "Department" means the Utah Department of Health, Bureau of Licensing.

(2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102.

(3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63G-4-201(2) that the department issues to commence an adjudicative proceeding.

(4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63G-4-201(3) that requests the department to commence an adjudicative proceeding.

R432-30-3. Commencement of Adjudicative Proceedings.

(1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are formal adjudicative proceedings.

(2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63G-4-201(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63G-4-201(3) by completing the "Facility Licensing Request for Agency Action" form and filing the form with the department.

R432-30-4. Responses.

(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Section 63G-4-201(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

(3) The written response shall:

(a) include the information specified in Subsection 63G-4-204(1);

(b) be signed by the respondent or the respondent's representative; and

(c) be filed with the Department during the time period specified in Subsection R432-30-4(1) or R432-30-4(2).

(4) The respondent shall send one copy of the response by certified mail to each party.

(5) A person who has filed a request for agency action and has received notice from the presiding officer under Section 63G-4-201(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

(6) The presiding officer upon motion of a party or upon the presiding officer's own motion may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

R432-30-5. Discovery.

(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

(2) The provisions of Rules 26, 27,28, 29. 30. 32.34.36. and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to R432-30-6.

R432-30-6. Witnesses and Subpoenas.

(1) Each party is responsible for the presence of that party's witnesses at the hearing.

(2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

(a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

(b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

(c) every subpoena shall be issued by the presiding officer under the seal of the department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place therein specified.

(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:

(i) the name and address of the entity upon whom the subpoena is to be served;

(ii) a description of what the party seeks to have the witness bring;

(iii) a showing of the materiality to the issue involved in the hearing;

(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.

R432-30-7. Certificate of Service.

There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:

I certify that I served the foregoing document upon all parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person).

R432-30-8. Stays and Temporary Remedy.

(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

R432-30-9. Declaratory Orders.

(1) Any person or agency may petition for a department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.

(2) Any person or agency may petition for a department declaratory ruling on orders issued by the Bureau of Health Facility Licensure in areas where the Health Facility Committee has statutory authority to issue orders by following the procedures outlined in Rule R380-5.

KEY: health facilities

March 3, 1995	**26-21-5**
Notice of Continuation December 11, 2009	**26-21-14 through 26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-35. Background Screening.
R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult licensing information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities; and
(6) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a juvenile court substantiated or DHS supported finding report of severe child abuse or neglect or DHS substantiated finding of disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, persons contracted to perform direct care and, for residential settings, all individuals residing in the home where an assisted living or small health care program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of elder or disabled adult abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness;
(f) chronic or severe neglect; or
(g) financial exploitation.

(4) "Supported" means a DHS finding, at the completion of an investigation that there is a reasonable basis to conclude that one or more of the following types of severe abuse or neglect has occurred to a child:

(a) severe or chronic physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness; or
(f) chronic or severe emotional abuse.

(5) "Unsupervised Contact" means contact with residents or patients that provides the unsupervised person opportunity and probability for personal communication or touch or for access to personal funds and property when not under the direct supervision of a health care provider or employee.

(6) "Volunteer" means an individual who is not directly compensated for providing care, including family members of patients or residents enrolled in the program, whose duties assigned by a health care provider or employee include unsupervised contact in a health care facility on a regularly scheduled basis of one or more times per month.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor the Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

(c) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(2) The Department shall review any criminal convictions, consistent with R432-35, to determine if action should be taken to protect the health and safety of patients and residents receiving health care services in the covered health care facility.

(3) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the health care provider and the covered individual explaining the action and the right of appeal.

R432-35-5. Exclusion from Direct Patient Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted of a felony or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department may revoke an existing license or and refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual

conduct with a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children and disabled and elderly adults.

(4) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the Department denies a covered individual a license or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All covered health care facilities must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours of discovery.

R432-35-6. Licensing Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect of a disabled or elder adult or a supported finding of severe abuse or neglect of a child, from the licensing information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the licensing information system, the Department shall review the date of the supported or substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the licensing information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of elder or disabled adult abuse or supported finding of severe child abuse or neglect , he must pursue an appeal with the DHS or the juvenile court. If the covered individual agrees with the substantiated or supported finding of abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation or supported finding, the Department may hold the license or employment denial in abeyance until DHS or the juvenile court renders a decision,.

(6) If the DHS determines a covered individual has a substantiated or supported finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

R432-35-7. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R432-5(2), the Department may act to protect the health and safety of patients and residents in covered health care facilities that the individual may have contact with. The Department may revoke or suspend any license or employment if necessary to protect the health and safety of patients and residents in care.

(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the facility can demonstrate that the individual can work without posing a threat to the safety and health of the resident or patient being served in the licensed health care facility.

(3) If the Department denies or revokes a license, or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that they may request a hearing with the Department.

(4) The Department may hold the license or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R432-35-8. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities
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Notice of Continuation May 27, 2008

R432. Health, Health Systems Improvement, Licensing.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assessment" means documentation of each resident's ability or current condition in the following areas:

(i) memory and daily decision making ability;

(ii) ability to communicate effectively with others;

(iii) physical functioning and ability to perform activities of daily living;

(iv) continence;

(v) mood and behavior patterns;

(vi) weight loss;

(vii) medication use and the ability to self-medicate;

(viii) special treatments and procedures;

(ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;

(x) leisure patterns and interests;

(xi) assistive devices; and

(xii) prosthetics.

(b) "Activities of daily living (ADL)" are the following:

(i) personal grooming, including oral hygiene and denture care;

(ii) dressing;

(iii) bathing;

(iv) toileting and toilet hygiene;

(v) eating during mealtime;

(vi) self administration of medication; and

(vii) independent transferring, ambulation and mobility.

(c) "Dependent" means a person who meets one or all of the following criteria:

(i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;

(ii) is unable to evacuate from the facility without the physical assistance of two persons.

(d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(e) "Hospice patient" means an individual who is admitted to a hospice program or agency.

(f) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(g) "Self-direct medication administration" means the resident can:

(i) recognize medications offered by color or shape; and

(ii) question differences in the usual routine of medications.

(h) "Semi-independent" means a person who is:

(i) physically disabled but able to direct his own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with limited physical assistance of one person.

(i) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(j) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(k) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(l) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(m) "Social care" means:

(i) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(n) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local

laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) be of good moral character;

(e) complete the criminal background screening process defined in R432-35; and

(f) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation

shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and

(e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Tuberculosis Control Rule.

(i) Skin testing must be conducted on each employee within two weeks of hire and after suspected exposure to a resident with active tuberculosis.

(ii) All employees with known positive reaction to skin tests are exempt from skin testing.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility,

as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living; and

(iv) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care.

(6) A Type I facility may accept or retain residents who:

(a) do not require significant assistance during night sleeping hours;

(b) are able to take life saving action in an emergency without the assistance of another person; and

(c) do not require significant assistance from staff or others with more than two ADL's.

(7) A Type II facility may accept or retain residents who require significant assistance from staff or others in more than two ADL's, provided the staffing level and coordinated supportive health and social services meet the needs of the resident.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable to exit the facility without assistance upon the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable to exit the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if a resident becomes dependent while on hospice care and the facility wants to retain the resident in the facility, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-12. Resident Assessment.

(1) Each person admitted to an assisted living facility shall have a personal physician or a licensed practitioner prior to admission.

(2) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(3) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by the administrator or a designated facility service coordinator.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service

plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

(a) a nursing assessment on each resident;

(b) general health monitoring on each resident; and

(c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a Department-approved wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (d) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications from a package set up by a licensed practitioner or licensed pharmacist which identifies the medication and time to administer. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions,

administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the service plan.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) Each facility must have a licensed health care professional or licensed pharmacist document any change in the dosage or schedule of medication in the medication record. The delegating authority must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed by the person who makes the error.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

(8) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;
(c) termination date;
(d) reason for leaving;
(e) documentation of CPR and first aid training;
(f) health inventory;
(g) food handlers permits;
(h) TB skin test documentation; and
(i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:
(a) the resident's name, date of birth, and last address;
(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;
(c) the name, address, and telephone number of the individual to be notified in case of accident or death;
(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;
(e) the admission agreement;
(f) the resident assessment; and
(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.
(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.
(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.
(c) The facility food service must comply with the following:
(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.
(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.
(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.
(a) All menus must be approved and signed by a certified dietitian.
(b) Cycle menus shall cover a minimum of three weeks.
(c) The current week's menu shall be posted for residents' viewing.
(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.
(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.
(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:
(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.
(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including sufficient linen supply to permit a change in bed linens for the total number of licensed beds, plus an additional fifty percent of the licensed bed capacity.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use, the following:
(a) at least one washing machine and one clothes dryer; and
(b) at least one iron and ironing board.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.
(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.
(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.
(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed

plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

(a.) Demographic information;

(b.) An emergency contact with name, address and telephone number;

(c.) Consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) Signed consumer agreement and service plan.

(e) Employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The program shall have written eligibility, admission and discharge policy to include the following:

(a) Intake process;

(b) Notification of responsible party;

(c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

(a) Rules of the program;

(b) Services to be provided and cost of service, including refund policy; and

(c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.

(9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.

(10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during program operational hours.

(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(13) Staff supervision shall be provided continually when

consumers are present.

(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.

(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.
The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.
All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.
(1) See common definitions rule R432-1-3.
(2) Special definitions:
(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.
(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.
(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.
Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.
(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.
(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.
(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:
(a) Provision of skilled services authorized by a physician;
(b) Nursing services assessed, provided, or supervised by registered nurses;
(c) Other related health services approved by a licensed practitioner;

R432-700-7. Licensure Required.
(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.
(2) See R432-2.

R432-700-8. Governing Body and Policies.
(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.
(2) The administrative structure of the agency must be shown by an organization chart.
(3) The governing body shall assume responsibility to:
(a) Comply with all federal regulations, state rules, and local laws;
(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;
(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);
(d) Develop and implement bylaws which shall include at least:
(i) A statement of purpose;
(ii) A statement of qualifications for membership and methods to select members of the governing board;
(iii) A provision for the establishment, selection, and term of office for committee members and officers;
(iv) A description of functions and duties of the governing body, officers, and committees;
(v) A statement of the authority and responsibility delegated to the administrator;
(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;
(vii) Meet as stated in bylaws, at least annually;
(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.
(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.
(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.
(6) Make provision for resources and equipment to provide a safe working environment for personnel.
(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.
(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.
(2) The administrator shall have at least one year of managerial or supervisory experience.
(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.
(4) The administrator or designee shall be available during the agency's hours of operation.
(5) Responsibilities.
The administrator shall have the responsibility to:
(a) Complete, submit, and file all records and reports required by the Department;
(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;
(c) Implement agency policies and procedures;
(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;
(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;
(f) Appoint a registered nurse to be the director of nursing services;
(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;
(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;
(i) Designate a person responsible for maintaining a

clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704, Communicable Disease Rules.

(3) Skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) Skin testing must be conducted on each health care worker who has direct patient contact annually and after known exposure to a patient with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual providing home health services;

(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be maintained in an organized format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) A written plan of care;

(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) Reasons for referral to home health agency;

(e) Statement of the suitability of the patient's place of residence for the provision of health care services;

(f) Documentation of telephone consultation or case conferences with other individuals providing services;

(j) Signed and dated clinical notes for each patient contact or home visit including services provided

(h) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;

(iii) General physical condition;

(iv) General emotional condition;

(v) Positive or negative physical and emotional responses

to treatments and services;
(vi) General behavior; and
(vii) General appearance.
(f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.
(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.
(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.
(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.
(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.
(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.
(3) The agency shall demonstrate concern for cost of care by evaluation of the following:
(a) Relevance of health care services;
(b) Appropriateness of treatment frequency;
(c) Use of less expensive, but still effective, resources whenever possible;
(d) Use of ancillary services consistent with patient needs.
(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.
(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.
(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.
(5) The methodology for evaluation shall include but is not limited to:
(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;
(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;
(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.
(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
(4) Nursing staff shall observe, report, and record written clinical notes.
(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.
(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.
(7) Licensed nurses shall have the following responsibilities:
(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;
(c) Inform the physician and other personnel of changes in the patient's condition and needs;
(d) Write clinical notes in the individual patient record for each visit or contact;
(e) Teach self-care techniques to the patient or family, or both;
(f) Develop plans of care;
(g) Participate in in-service programs.
(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:
(a) Designate a registered nurse to act as director of nursing services during his absence;
(b) Assume responsibility for the quality of nursing services provided by the agency;
(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;
(d) Establish work schedules for nursing personnel according to patient needs;
(e) Assist in development of job descriptions for nursing personnel;
(f) Complete performance evaluations for nursing personnel according to agency policy;
(g) Direct in-service programs for all nursing personnel.
(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:
(a) Make the initial nursing evaluation visit;
(b) Re-evaluate nursing needs based on the patient's status and condition;
(c) Initiate the plan of care and make necessary revisions;
(d) Provide services which require specialized nursing skill;
(e) Initiate appropriate preventive and rehabilitative nursing procedures;
(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree ot supervision needed;
(g) Assist in coordinating all services provided;
(h) Prepare termination of services statements;
(i) Supervise and consult with licensed practical nurses as necessary;
(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of

care;

(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the certified nursing aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every three months to patients who require long-term maintenance services;

(iv) Any time there is a question of change in the patient's condition.

(10) The licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

The certified nursing aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The certified nursing aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patients;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

(14) Certified Nursing Aides shall be at least 18 years old.

(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:

(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;

(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

R432-700-23. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:

(a) Receive written instructions from the supervisor;

(b) Perform only the tasks and duties outlined in the service agreement;

(c) Have knowledge of agency policy and procedures;

(d) Be trained in first aid;

(e) Be oriented and trained in all aspects of care to be provided to clients;

(f) Be able to demonstrate compentency in all areas of training for personal care; and

(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;

(2) Personal Care Aides may assist clients with the following activities:

(a) Self-administration of medications by:

(i) reminding the client to take medications, and

(ii) opening containers for the client;

(b) Housekeeping;

(c) Personal grooming and dressing;

(d) Eating and meal preparation;

(e) Oral hygiene and denture care;

(f) Toileting and toilet hygiene;

(g) Arranging for medical and dental care including transportation to and from the appointment;

(h) taking and recording oral temperatures;

(i) Administering emergency first aid;

(j) Providing or arranging for social interaction;

(k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;

(i) Necessary safety measures;

(j) Instructions, if any, to patient and/or family;

(k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW)or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. Home Health - Personal Care Service Agency.

(1) A Home Health - Personal Care Service Agency provides personal care services exclusively.

(2) The agency shall develop written policies and procedures that address the delivery of personal care services.

(3) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(a) The administrator shall have at least one year or managerial or supervisory experience.

(b) The administrator shall designate in writing a qualified person who shall act in his absence and the designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being;

(c) The administrator or designee shall be available during the agency's hours of operation.

(4) Each employee shall be licensed, certified or registered as required in R432-700-10.

(5) Each employee shall complete a health screening as described in R432-700-11.

(6) The agency may accept clients for service if the client's needs do not exceed the level of personal care to be provided by the Home Health- Personal Care Service Agency.

(7) The agency shall complete a functional assessment for each client receiving personal care services, prior to admission to the agency and annually thereafter, or at earlier intervals when a significant change in condition occurs.

(a) A licensed health care professional shall complete the functional assessment. The assessment shall include a statement that personal care services can be provided safely to the client.

(b) If the functional assessment reveals that the client's needs exceed the personal care services, the health care professional shall make a referral to a home health agency or other alternative service.

(8) The agency shall obtain a signed and dated service agreement from the client and his responsible party, if available. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in charges.

(9) The Home Health-Personal Care Service Agency shall maintain and secure client records for each client receiving services.

(a) Client records shall be retained by the agency for three years following the last date of service;

(b) The client record shall contain the following:

(i) Client's name, date of birth and address;

(ii) Client service agreement;

(iii) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;

(iv) Documentation of date and reason for the termination of services, which may include the following:

(A) Payment for services cannot be met;

(B) The safety of the client or provider cannot be assured;

(C) The needs of the client exceed the level of care provided by the agency;

(D) The client requests termination of services; or

(E) The agency discontinues services.

(v) Documentation of the Personal Care Aide visit.

(10) Personal Care Aides shall meet the qualification of R432-700-23 and be supervised by an individual with the following qualifications:

(a) A Certified Nursing Aide with at least two years experience in personal or home care; or

(b) A licensed health care professional.

(11) The supervisor shall evaluate and document the quality of the personal care services provided in the client's place of residence every six months.

R432-700-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
January 5, 2010 26-21-5
Notice of Continuation September 27, 2007 26-21-2.1

R438. Health, Epidemiology and Laboratory Services, Laboratory Services.
R438-12. Rule for Law Enforcement Blood Draws.
R438-12-1. Definitions.

(1) "Director" means the Executive Director of the Department of Health.

(2) "Department" means the Department of Health.

R438-12-2. Authorized Individual - Qualifications.

Pursuant to section 26-1-30(2)(s), individuals other than physicians, registered nurses, or practical nurses shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcoholic or drug content when requested to do so by a peace officer:

(1) training in blood withdrawal procedures obtained as a defined part of a successfully completed college or university course taken for credit, or

(2) training in blood withdrawal procedures obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations, or

(3) training of no less than three weeks duration in blood withdrawal procedures under the guidance of a licensed physician.

R438-12-3. Permits for Authorized Individuals.

(1) Pursuant to section 26-1-30(2)(s), the Department shall issue permits to withdraw blood for the purpose of determining the alcoholic or drug content therein, when requested by a peace officer, to qualified applicants, as determined by the Department. The permit shall be of a size suitable for framing and a wallet-sized permit card shall be issued with the permit.

(2) Application to obtain a permit shall be made to the Director, Division of Epidemiology and Laboratory Services on forms provided by the Department.

(3) The permit shall be prominently displayed in the facility where the permit holder is employed. When the permit holder is requested to withdraw blood for the above stated purpose at a location other than the facility indicated above, he must have a valid permit card on his person.

(4) The effective date of a permit shall be the date the application is approved by the Department, which date shall appear on the permit and on the wallet-sized permit card. Permits shall be valid for a three year period on a calendar year basis. The date the permit expires shall appear on the permit and on the wallet-sized permit card. Permits shall be subject to termination or revocation pursuant to R438-12-4.

(5) Application to renew permits shall be made to the Director, Division of Epidemiology and Laboratory Services before the end of each three year permit period. Such application shall be made on forms provided by the Department. The permit holder shall either certify that he has been engaged in performing blood withdrawal procedures during the current permit period or submit a certificate signed by a physician attesting to his competence to perform blood withdrawal procedures.

(6) Permit holders must notify the Director, Division of Epidemiology and Laboratory Services within 15 days of a change in name or mailing address. Permits or permit cards that are destroyed or lost may be replaced upon written request from the permit holder.

R438-12-4. Cause for Permit Termination or Revocation.

Violation of this rule violates Section 26-23-6 and is cause to cancel any permit issued under this rule.

Permits shall be subject to termination or revocation under any one of the following:

1. The permit holder has made any misrepresentation of a material fact in his application, or any other communication to the Department or its representatives, which misrepresentation was material to the eligibility of the permit holder.

2. The permit holder is not qualified under R438-12-2 to hold a permit.

3. The permit holder after having received a permit has been convicted of a felony or of a misdemeanor which misdemeanor involves moral turpitude.

4. The permit holder does not comply with the display or possession requirements stated in R438-12-3.C.

R438-12-5. Published List of Authorized Individuals.

The Department shall publish annually, a list of individuals authorized to withdraw blood for determination of its alcoholic or drug content, when requested to do so by a peace officer. This list shall include the individual's name, mailing address, and permit number. The list shall be made available to all state and local law enforcement agencies, all local health departments, and any other person or agency requesting the information. The Department may publish amended lists when deemed necessary.

KEY: sobriety tests
January 6, 2010 **41-6a-523**
Notice of Continuation May 8, 2007 **26-1-30(2)(s)**

R510. Human Services, Aging and Adult Services.
R510-401. Utah Caregiver Support Program (UCSP).
R510-401-1. Utah Caregiver Support Program Purpose.

The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP) and 2006 (PL 109-365) Subpart 1 - Caregiver Support Program.

The purpose of the program is to provide support services including information and assistance, counseling, support groups, respite and other home and community-based services to family caregivers of frail older individuals. The program also recognizes the needs of grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to children under the age of 18 years as well as to grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities. Adult family members (age 18 years of older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders are also served under this program|.

Operation of the program is a joint responsibility of the State Division of Aging and Adult Services and local Area Agencies on Aging (AAA). Funds are distributed by formula (R510-100-1) to local AAAs.

R510-401-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001.

R510-401-3. Definitions.

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency or Area Agency on Aging (AAA)" means the agency designated by the Division of Aging and Adult Services (DAAS) to coordinate and provide services for a defined geographical area.

(3) "Agency Director" means the director of the Agency.

(4) "Caregiver or Family Caregiver" means an adult family member, or another adult individual, who is an informal provider of in-home and community care to an older individual who is:

(a) 60 years of age or older; or is a

(b) caregiver 60 years of age or older who is caring for persons with mental retardation or related developmental disabilities; or is an

(c) adult family member (age 18 years or older) or other adult informal caregiver providing care to individuals of any age with Alzheimer's disease and related disorders; or is a

(d) grandparent 55 years of age or older individual who is a relative caregiver (not biological or adoptive parents) of a child not more than 18 years of age ; or is a

(e) grandparent and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(f) This definition excludes agency and privately-paid supportive service providers.

(5) "Care Receiver" means an adult 60 years of age or older who receives assistance from, or is dependent upon, another for care and is:

(a) unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision; or

(6) "Child" means an individual who is not more than 18 years of age or who is an individual with a disability.

(7) "Companion Services" means non-medical, basic supervisory services which are provided to the eligible care receiver in his home on a short-term, intermittent basis. Companion Services provide respite to a caregiver who is caring for eligible care receivers who do not require any personal care assistance, medical assistance, or housekeeping services during the time when companion services are provided.

(8) "Counseling, Support Groups, or Caregiver Training" means provision of advice, guidance, and education about options and methods of caregiving to provide support to caregivers in an individual or group setting.

(9) "Director" means the director of the Division of Aging and Adult Services (DAAS), Utah Department of Human Services).

(10) "Disability" means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitation in 1 or more of the following areas of major life activity:

(a) self care,
(b) receptive and expressive language,
(c) learning,
(d) mobility,
(e) self-direction,
(f) capacity for independent living,
(g) economic self-sufficiency,
(h) cognitive functions, and
(i) emotional adjustment.

(11) "Division" means the Division of Aging and Adult Services (DAAS), Utah Department of Human Services.

(12) "Formal Resources" means an entity or individual that provides services for a fee or reimbursement.

(13) "Grandparent or Older Individual who is a Relative Caregiver" means a grandparent or step- grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and:

(a) lives with the child;

(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and,

(c) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

(14) "Informal Resources" means family, friends, neighbors, community organizations or others who offer resources and support and are not assigned by formal agencies or organizations, irrespective of any payment received.

(15) "Multifaceted Systems" means a variety of systems of support for the caregiver including but not limited to those described in the required five service categories of the (NFCSP), Title III E of the Older Americans Act, as amended in 2000.

(16) "National Family Caregiver Support Program or NFCSP" is the federal program enacted as P. L. 106-501, Title IIIE of the Older Americans Act, P. L. 89-73, 42 USC Section 3001 et seq., as amended in 2000.

(17) "Relief means ease from or lessening of discomfort, anxiety, fear, stress, or burden.

(18) "Respite or Respite Care" is temporary, substitute supports or living arrangements to provide a brief period of relief or rest for caregivers as outlined in the service plan developed by a case manager following a formal assessment. It can be in the form of in-home respite, adult day care respite, or institutional respite for an overnight stay on an intermittent, occasional, or emergency basis. Respite can be provided for a caregiver for no more than 12 consecutive months from the date of enrollment and shall not exceed the annual service expenditure limit per client, as established by the Division in consultation the Area Agencies on Aging annually. If either condition is met, the caregiver must come off of the program and then may reapply on the anniversary of the start of services. Temporary respite may not be provided by the twenty percent

(20%) maximum supplemental services funds.

(19) "Severe Disability" means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(a) is likely to continue indefinitely; and

(b) results in substantial functional limitation in 3 or more of the following major life activities:

(i) self care,

(ii) receptive and expressive language,

(iii) learning,

(iv) mobility,

(v) self-direction,

(vi) capacity for independent living, and

(vii) economic self-sufficiency.

(20) "Service Plan" means a written plan which contains a description of the needs of the caregiver, the care recipient, and the services and goals necessary to meet those needs.

(21) "Supplemental Services" means other services to complement the care of caregivers, on a limited basis as determined by a case manager through the assessment process and included in a service plan. Supplemental services shall serve to maximize the support of caregivers and shall be flexible, adaptable, and responsive to the needs of the individual caregiver or care receiver wherever they reside in the State of Utah. Services provided under supplemental services shall not fall into other categories defined in the UCSP or the NFCSP.

(a) Expenditures for Supplemental Services are not included in the annual established service expenditure limit for Respite.

(b) Necessity for Supplemental Services shall be specified in the service plan goals. Reimbursement shall include the purchase and/or rental, installation, removal, replacement, or repair of approved items or services for the twelve months that the caregiver is on the program. The case manager will document in the caregiver file all funding resources explored and reasons alternative funding cannot be accessed. Items or services exceeding $250 per purchase must be prior approved by the Agency Director, or designee, based on a formal written request by the case manager or designee documenting the determination of need and estimated cost. The original approved waiver request will be placed and maintained by the Agency in the caregiver file and a copy sent in writing to the Division.

(c) "Supplies or Equipment" means durable and non-durable goods purchased and/or rented under supplemental services to provide support and assistance to caregivers in their caregiving responsibilities. Reimbursement shall include the purchase of supplies, and the purchase, and/or rental.installation, removal, replacement or repair of approved equipment.

(d) "Modifications or durable adaptive aids and devices" purchased as supplemental services shall be one-time purchases to provide support and assistance to caregivers in their caregiving responsibilities. Minor modifications of homes shall facilitate the ability of older individuals to remain at home or provide for the safety of the care receiver. Adaptive aids and devices shall assist the caregivers helping care receivers to perform normal living activities, and shall include the cost of any necessary installation fitting, adjustment, repair, and training. Adaptive aids and devices may be fabricated by a professional if the care receiver needs specialized aids and devices.

(e) "Legal, Financial, or Placement Services" purchased as supplemental services shall provide support and assistance to caregivers in their caregiving responsibilities. Services will provide the caregiver with legal, financial, and placement advice, counseling, and representation by an attorney, certified financial advisor, or other person acting under the supervision of an attorney, certified financial advisor, or placement professional.

(f) "Miscellaneous" services shall provide support and assistance to caregivers in their caregiving responsibilities. Miscellaneous services will facilitate the ability to provide services to caregivers that arise from unusual circumstances and shall assist the caregiver in performing their caregiving responsibilities.

(22) "Waiver" means an intentional release in writing by the Agency Director or designee, as authorized in the rules, from a program limitation included in these rules.

R510-401-4. Eligibility for Services.

(1) Services listed in Section R510-4O6-5 are available to caregivers, grandparents and older individuals who are relative caregivers.

(2) Priority to receive services shall be given in the order below:

(a) caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals); and

(b) family caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(c) older individuals providing care to individuals with severe disabilities, including children with severe disabilities; and

(d) grandparents or older individuals who are relative caregivers who provide care for children with severe disabilities.

(3) Respite care and Supplemental Services are available to caregivers who are:

(a) caregivers of adults 60 years of age or older; or are

(b) adult family members (age 18 years or older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders; or are

(c) caregivers 60 years of age or older caring for persons with mental retardation or related developmental disabilities; or are

(d) grandparents or older individuals (not biological or adoptive parents) 55 years of age or older who are a relative caregiver of a child not more than 18 years of age. ; or are

(e) grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(4) To provide Respite and Supplemental Services to eligible the care receiver must be:

(a) Functionally impaired because the individual is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing or supervision; or

(b) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual; or

(c) A child physically or mentally impaired because the individual is unable to perform at least two areas of major life activity.

(d) The caregiver must demonstrate a medium-to-high risk score according to the DAAS Approved Demographic Intake and Screening tool and complete the DAAS-approved Assessment and DAAS-approved Burden score.

(5) In the event that there is insufficient funds to bring an individual on the program the Agency shall maintain a list of potential applicants. All potential applicants will be served in turn by using the DAAS-approved Demographic Intake and Risk Screening tool, and a Caregiver Burden score to determine eligibility for services.

R510-401-5. Responsibilities of the Division.

(1) Pursuant to UCA 62A-3-1O4, the Division shall:

(a) establish a funding formula for the distribution of the

funds as approved by the Board;

(b) monitor, and at the request of the Area Agency on Aging, consult and assist in UCSP;

(c) provide training opportunities;

(d) define minimal documentation and client assessment standards; and

(e) approve or disapprove waivers and exceptions.

R510-401-6. Program Content.

(1) Each Area Agency on Aging shall provide a multifaceted system of caregiver support services for caregivers and for grandparents or older individuals who are relative caregivers to include:

(a) information to caregivers about available services;

(b) individual, one-on-one assistance to caregivers in gaining access to services in the form of information and assistance or case management. Assistance may include but is not limited to such activities as phone contact and home visits;

(c) individual counseling, support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their caregiving roles;

(d) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers.

(2) The Area Agency on Aging shall use the DAAS-approved Demographic Intake and Risk Screening form and assessment tool to determine eligibility for respite and supplemental services and said tools shall be kept in the client file.

(3) Prior to receiving respite or supplemental services the Area Agency on Aging shall develop a written service plan including goals and objectives for the caregiver, which shall be kept in the client file.

(4) The Area Agency on Aging shall ensure the provision of the full range of caregiver support services in the community by coordinating its activities with the activities of other community agencies and voluntary organizations providing supportive services to family caregivers and grandparents or older individuals who are relative caregivers of children.

(5) Older Americans Act information and services shall be provided to family caregivers in a direct and helpful manner. In cases where caregiver support programs already exist within the community, coordination of these programs and the UCSP is essential to maximize the dollars available for family caregivers and avoid duplication of services.

(6) To assure coordination of caregiver services in the planning and service area, the Area Agency on Aging shall convene a minimum of one joint planning meeting annually with other local providers who currently provide support services to family caregivers. As practical, the Area Agency on Aging shall coordinate the activities under this program with other community agencies and voluntary organizations providing services to caregivers.

(7) Funds allocated on an annual basis under the UCSP for services provided by an Area Agency on Aging shall be expended as follows:

(a) Information to caregivers about available services: the Area Agency on Aging may not use less than three percent of the funds allocated under the UCSP to provide these services.

(b) Assistance to caregivers in gaining access to the services: the Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(c) Individual counseling, organization of support groups, and caregiver training to caregivers to assist the caregivers in the areas of health, nutrition and financial literacy and in making decisions and solving problems relating to their caregiving roles. The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers: The Area Agency on Aging may not use more than twenty percent of the funds allocated under the UCSP to provide these services.

(f) The Area Agency on Aging shall spend no more than ten percent of funds on services provided to grandparents and other individuals who are relative caregivers of a child not more than 18 years of age.

(8) If a customer discontinues Respite and/or Supplemental Services before the end of the twelve- month period and before the annual established service expenditure limit per client is reached, the case shall be closed.

(a) If funds are available, the caregiver may be readmitted to the program subsequent to the case closing but shall do so within twelve months from the original date of enrollment.

(b) If no funds are available, the person will be placed at the top of the list to be the first person to be admitted to the program if the person still has time left on the program.

(c) If funds become available, but there is no time remaining based on the original admission, then the caregiver needs to reapply and be considered for admission to the program with all other applicants.

(9) The Area Agency on Aging shall make use of trained volunteers to expand the provision of available resources and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community settings.

R510-401-7. Caregiver Advisory Council.

(1) The Area Agency on Aging shall develop and maintain a Caregiver Advisory Council.

(2) The Caregiver Advisory Council may be a subgroup of the Area Agency on Aging Advisory Council providing they meet the requirements set forth in the rule.

(a) The Caregiver Advisory Council may be comprised of no less than five members, some of who shall be caregivers.

(3) The Caregiver Advisory Council shall meet no less than semiannually, and meetings shall be scheduled by each Area Agency on Aging.

(4) The primary duty of the Caregiver Advisory Council shall include but not be limited to conducting an annual caregiver satisfaction survey for the caregiver program.

(5) The Caregiver Advisory Council shall advise the Area Agency on Aging in determining service needs and developing action plans. When there is a concern over the use of limited resources for Respite Care and Supplemental Services, the Area Agencies on Aging, in consultation with their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers for the current fiscal year.

R510-401-8. Voluntary Contributions.

(1) Individuals receiving services from this program may be encouraged to participate in voluntary contributions for services, provided that the method of solicitation is non-coercive.

(2) Voluntary contributions shall in no way be based on a means test of an individual client's income.

(3) Each Area Agency on Aging shall implement procedures for voluntary contributions in the UCSP, and shall

comply, at a minimum, with the following:

(a) provide each recipient with an opportunity to voluntarily contribute to the cost of the services;

(b) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(c) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and

(d) establish appropriate procedures to safeguard and account for voluntary contributions.

(4) Use all collected voluntary contributions to expand the service for which such contributions were given.

(5) In no instance shall services be denied if individuals do not participate in voluntary contributions.

(6) Area Agencies on Aging will consult with relevant service providers and older individuals in their planning and service area to determine the best method for accepting voluntary contributions.

R510-401-9. Reporting.

(1) The Area Agency on Aging shall collect data and maintain records relating to the UCSP in the format specified by the Division.

(2) The Area Agency on Aging shall furnish the records to the DAAS as specified.

(3) The Area Agency on Aging shall report to DAAS, as specified, the activities and determinations of the Caregiver Advisory Council.

(4) The Area Agency on Aging shall report to DAAS any mechanisms used with caregivers regarding information about and access to various services so that the persons can better carry out their caregiver responsibilities.

R510-401-10. Waiver Requests for Respite and Supplemental Services.

(1) An Area Agency on Aging may request in writing a waiver for Respite and Supplemental Services in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Agency Director, or designee, may grant a waiver for Supplemental Services or Respite on a case-by-case basis provided that such waiver is consistent with the law. A copy of the approved waiver request must be placed in the client file and a copy sent in writing to the Division.

KEY: caregiver, care receiver, elderly, respite
January 19, 2010 63A-3-104(4)
Notice of Continuation June 22, 2005 62A-3-104(5)

R523. Human Services, Substance Abuse and Mental Health.
R523-21. Division of Substance Abuse and Mental Health Rules.
R523-21-1. Rules Governing Methadone Providers.

(1) The Division of Substance Abuse and Mental Health under the authority granted to it by Section 62A-15-105(5), establishes the following standards for providers of methadone and other opioid treatment medication services.

(2) All Substance Abuse providers, contractors or licensed persons who dispense methadone or other opioid treatment medications shall:

(a) comply with all Federal regulations, including 42 CFR Part 8;

(b) comply with all State, and Local requirements regulating licensing for the purchasing, possession, distribution, and dispensing of methadone or other opioid treatment medications;

(c) comply with all requirements of licensed substance abuse treatment programs; and

(d) comply with the requirements of the Utah Department of Human Services "Provider Code of Conduct".

R523-21-2. Division Duties in Monitoring Methadone Treatment.

(1) The Division of Substance Abuse and Mental Health, in consultation with, and receiving input from the licensed Opioid Treatment Providers (OTPs) in the state, shall:

(a) conduct regular meetings of the licensed OTPs in the state;

(b) work with licensed OTPs and other agencies as necessary to preclude dual enrollments of clients;

(c) disseminate current research and information pertaining to opioid treatment;

(d) review and act on Exemption Requests to Federal Take Home regulations in accordance with 42 CFR Part 8; and

(e) develop and promulgate a protocol for take home exceptions for long distance clients in conjunction with the Center for Substance Abuse Treatment's Division of Pharmacologic Therapies and the licensed OTPs with the state.

KEY: methadone programs
January 20, 2010 **62A-15-105(5)**
Notice of Continuation April 6, 2006

R527. Human Services, Recovery Services.
R527-40. Retained Support.
R527-40-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to define "retained support" in regards to a child support case, and to provide details as to how the amount owed is calculated once a retained support case has been opened for an obligee who has retained payments that were assigned to the state.

R527-40-2. Retained Support.

1. The term Retained Support refers to a situation in which an obligee who has assigned support rights to the state has received child support but failed to forward the payment(s) to ORS.

2. The agent will refer the case to the appropriate child support team with the evidence to support the referral.

3. In computing the amount owed, the obligee will be given credit for the $50 pass-through payment for any months prior to March, 1997, in which support was retained by the client. For example, if the obligee received and kept a support payment of $200 in February, 1997, the referral will be made as a $150 debt. For support payments retained on or after March 1, 1997, no credit shall be given because there will be no pass-through payments for support payments made after February 28, 1997.

KEY: child support
June 15, 2009 **62A-1-111**
Notice of Continuation January 4, 2010 **62A-11-107**
62A-11-304.1
62A-11-307.1(3)
62A-11-307.2(3)

R590. Insurance, Administration.
R590-88. Prohibited Transactions Between Agents And Unauthorized Multiple Employer Trusts.
R590-88-1. Purpose and Authority.

It is the responsibility of the Utah State Insurance Department to assist with the maintenance of a fair and honest insurance market and to protect the residents of this state against acts by persons attempting to evade the insurance laws of the state. The insurance market is subject to regulation to prevent, among other things, unfair competition from persons and entities not authorized to conduct an insurance business.

This Rule is issued pursuant to the authority vested in the Commissioner under Sections 31A-2-201, and 31A-23-302, Utah Code Annotated.

R590-88-2. Background.

In the State of Utah entities representing themselves as Multiple Employer Trusts (METs) under the Employee Retirement Income Security Act of 1974 (ERISA) are undertaking contractual obligations to provide life, accident and health, disability, or other related insurance-type benefits. In many cases these programs are not insured by an insurer licensed in the State of Utah. These programs and entities appear to be providing insurance benefits, although a MET may not refer to such benefits as "insurance."

METs are not licensed to provide insurance benefits under Section 31A-4-103, Utah Code Annotated. METs do not submit reports of financial condition to the Utah State Insurance Department or remit premium taxes on business written. Furthermore, most METs do not meet certain minimum capital and surplus requirements of the Utah insurance laws which are designed to provide protection against an insolvency. A MET may offer certain annuity or insurance-type benefits to persons because of their status as employees. These benefits include those common to the following types of insurance: medical, surgical, hospital, sickness, accident, disability, death, retirement income, income deferral.

METs are required to file annual reports with the United States Department of Labor. The annual report should state the extent to which a MET's annuity or insurance-type benefits are provided by an insurance carrier.

R590-88-3. Definitions.

(A) Multiple Employer Trust (MET) - An entity is herein referred to as a Multiple Employer Trust (MET) if that entity is providing insurance type benefits to employees of more than one employer, and that entity is not an insurance company authorized to do business in the state of Utah.

(B) Unauthorized Multiple Employer Trust - An entity purporting to be a Multiple Employer Trust (MET) is hereby defined as an Unauthorized Multiple Employer Trust if:

(1) The MET has not received an opinion letter from the United States Department of Labor recognizing the entity as a qualified trust under ERISA, or

(2) The benefits offered are not fully insured by an insurer licensed to do business in the State of Utah and no opinion letter recognizing the entity as a qualified ERISA plan has been issued from the U.S. Department of Labor.

(C) An unauthorized MET is defined to be an unauthorized insurer. Any claimed multiple employer trust which does not fulfill the requirements of a multiemployer plan as defined by ERISA, 29 U.S.C. 1001 et seq., as amended, is also defined to be an unauthorized MET and consequently an unauthorized insurer.

(D) All other definitions are the same as are provided in Chapter 1, Title 31A, Utah Code Annotated.

R590-88-4. Prohibited Transactions.

When the Insurance Department finds evidence that a person (as defined in Section 31A-1-301, Utah Code Annotated) is engaging, or has engaged, in one or more of the following practices, that person's actions will be treated as prima facie evidence that the person has shown himself to be incompetent, untrustworthy, and/or a source of injury to the public pursuant to Section 31A-23-216, Utah Code Annotated. These practices are:

(A) Accepting commissions, salaries, or any other remuneration for placing business with or soliciting membership in an unauthorized MET, whether or not the arrangement involves a formal contract or is called a commission.

(B) Using the status or title as a licensed insurance agent in any way in connection with placement of business with an unauthorized MET. This shall include, but not be limited to:

(1) Using an agent's letterhead;

(2) Using an agent's office;

(3) Using customer lists or contracts developed as an agent; and

(4) Representing in any manner that the person placing this business is a licensed insurance agent.

R590-88-5. Sanctions.

Agents found to be engaging in, or to have engaged in, the prohibited transactions with unauthorized METs set forth under Section 4 of this Rule are subject to one or more of the following sanctions:

(A) Revocation or suspension of the agent's license and/or the imposition of a fine pursuant to Section 31A-23-216 Utah Code Annotated; and

(B) Recovery of any claims or losses pursuant to Section 31A-15-105, Utah Code Annotated; and

(C) Any other sanctions provided by law including those found in Section 31A-2-308, U.C.A.

R590-88-6. Inquiries.

In the event any person wishes to determine if a particular entity is a licensed insurer in the State of Utah, an inquiry should be made to the Insurance Department. Inquiries should be addressed as follows: Commissioner of Insurance, Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114, Attention: Insurer Licensing Division. Inquiries may also be made by telephone to the Insurance Department at (801) 538-3800.

R590-88-7. Severability.

If any provision or clause of this Rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the Rule which can be given effect without the invalid provision or application, and to this end the provisions of this Rule are declared to be severable.

KEY: insurance law

1989	**31A-2-101**
Notice of Continuation January 13, 2010	**31A-2-201**
	31A-2-211

R590. Insurance, Administration.
R590-128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)
R590-128-1. Authority.

This rule is promulgated pursuant to Section 31A-23-302(3), which provides guidelines for determining what is unfair discrimination, and Section 31A-23-302(8) which allows the commissioner to make rules defining unfair marketing acts or practices.

R590-128-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds are unfair and discriminatory.

R590-128-3. Scope and Applicability.

This rule applies to all automobile insurance contracts delivered or issued for delivery in this state on or after the effective date of this rule.

R590-128-4. Rule.

(1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

(a) refusing to insure or refusing to continue to insure;

(b) limiting the amount, extent or kinds of coverage available;

(c) charging applicants different rates for the same coverage by either surcharging one applicant who did not have prior insurance or crediting another applicant who did have prior insurance; or

(d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.

(2) In the application of Subsection (1) the following shall apply:

(a) an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws; or

(b) an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.

(3) Inadvertent lapses in coverage of up to 30 days due to the applicant's reasonable reliance on information from an insurance agent or company that the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

R590-128-5. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

KEY: insurance companies
June 16, 1998 **31A-23-302**
Notice of Continuation January 13, 2010

R590. Insurance, Administration.
R590-132. Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection.
R590-132-1. Authority, Purpose and Scope.

This rule is promulgated by the Insurance Commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers.

The purpose of this rule is to identify and restrict certain underwriting, classification, or declination practices regarding HIV infection, that the commissioner finds are or would be unfairly discriminatory if engaged in. This rule also provides guidelines for the confidentiality of AIDS related testing, which, if not followed, would be unfairly discriminatory or hazardous to members of the insuring public.

This rule applies to every licensee authorized to engage in the business of insurance in Utah under Title 31A of the Utah Code.

R590-132-2. Definitions.

For the purpose of this rule, the commissioner adopts the definitions set forth in Section 31A-1-301 and in addition, the following:

A. HIV infection is defined as the presence of Human Immunodeficiency Virus (HIV) in a person as detected by the following;

1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.
2. Presence of HIV antigen.
3. Isolation of HIV.
4. Demonstration of HIV proviral DNA.

R590-132-3. Rule.

A. Persons with HIV infection will not be singled out for either unfairly discriminatory or preferential treatment for insurance purposes.

B. To properly classify risks related to covering prospective insureds, insurers may require reasonable testing. Application questions must conform to the following guidelines:

1. No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

2. Sexual orientation may not be used in the underwriting process or in the determination of insurability.

C. When used, the testing of insurance applicants must not be administered on an unfair basis. If a prospective insured is to be declined or rated substandard because of HIV infection, such action must be based on appropriate confirmatory tests.

D. Notice and Consent. No person engaged in the business of insurance shall require an HIV test of an individual in connection with an application for insurance unless the individual signs a written release on a form which contains the following information:

1. A statement of the purpose, content, use and meaning of the test.

2. A statement regarding disclosure of the test results, including information explaining the effect of releasing information to a person directly engaged in the business of insurance. The applicant should be advised that the insurer may disclose test results to others involved in the underwriting and claims review processes. If the HIV test is positive, the results will be reported by those conducting the test or providers receiving test results to the local health department. If the applicant does not designate a physician or other health care provider, the insurer shall report a positive test result to the local health department. If the insurer is a member of the Medical Information Bureau ("MIB, Inc.") the insurer may report the test results to MIB, Inc. in a generic code which signifies only non-specific test abnormalities.

3. A provision where the applicant directs that any positive screen results be reported to a designated health care professional of his/her choice for post-test counseling.

For purposes of this section, insurers will use the following notice and consent disclosure form or a form that contains similar language. Such form is not considered part of the policy or policy application.

TABLE

Illustrative HIV Testing Informed Consent Form

EXAMINER ..... INSURER .....
ADDRESS ..... ADDRESS .....
....
....

NOTICE AND CONSENT FOR TESTING
WHICH MAY INCLUDE AIDS VIRUS (HIV) ANTIBODY/ANTIGEN TESTING

To determine your insurability, the insurer named above (the insurer) is requesting that you provide a sample of your blood and/or other bodily fluid for testing and analysis. In order to adequately perform all testing procedures, it may be necessary for you to provide a sample of more than one of these bodily fluids. All tests will be performed by a licensed laboratory.

Unless precluded by law, tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. The HIV antibody test performed is actually a series of tests done by a medically accepted procedure. The HIV antigen test directly identifies AIDS viral particles. These tests are extremely reliable. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats), screening for liver or kidney disorders, diabetes, immune disorders, and other physical conditions.

All test results will be treated confidentially. They will be reported by the laboratory to the insurer. When necessary for business reasons in connection with insurance you have or had applied for with the insurer, the insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors. If the insurer is a member of the Medical Information Bureau (MIB, Inc.), and should the insurer request an additional sample of bodily fluid for further testing, and you choose to decline that request, your declination to be tested will be reported to the MIB, Inc. Regardless of the number of tests requested, if the final test results for HIV antibodies/antigens are other than normal, the insurer will report to the MIB, Inc. a generic code which signifies only a non-specific abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc. in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There will be no other disclosure of test results or even that the tests have been done except as may be required or permitted by law or as authorized by you.

If your HIV test results are normal, no routine notification will be sent to you. If the HIV test results are other than normal, the insurer will contact you. The insurer may also contact you if there are other abnormal test results which, in the insurer's opinion, are significant. The insurer may ask you for the name of a physician or other health care provider to whom you may authorize disclosure and with whom you may wish to discuss the results. The laboratory, physician or other health care provider will report positive test results to the Health Department. If you have not designated a physician or other health care provider to receive disclosure of positive test results, the insurer will report positive test results to the health department.

Positive HIV antibodies/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

I have read and I understand this notice and consent for testing

which may include HIV antibodies/antigen testing. I voluntarily consent to the withdrawal from me of blood and/or other bodily fluid, the testing of that blood and/or other bodily fluid, and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

.....
Proposed Insured Date of Birth

.....
Signature of Proposed Insured Date

.....
State of Residence

.....
Designated Physician or Health Care Provider
that is to Receive Positive Test Results

.....
Street Address

.....
City State Zip

R590-132-4. Dissemination.

Each insurer is instructed to distribute a copy of this rule or an equivalent summary to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

R590-132-5. Penalties.

Any licensee that violates this rule will be subject to the forfeiture provisions set forth in Section 31A-2-308 and 31A-23-216.

R590-132-6. Confidentiality.

Except as outlined in R590-132-3(D) above, all positive or indeterminate records of the applicant held by the licensee that refer to the HIV status shall be held as confidential records under restricted access and will not be re-released unless re-disclosure is specifically authorized by the applicant.

Re-release and Re-disclosure are required when the test results are to be used for purposes other than those included in the initial release.

R590-132-7. Severability.

If any provision of this rule or its application to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

KEY: insurance law
March 1, 1998 **31A-2-201**
Notice of Continuation January 19, 2010

R595. Judicial Conduct Commission, Administration.
R595-1. General Provisions.
R595-1-1. Definitions.

In addition to terms defined in Section 78A-11-102 et seq. of the Utah Code:

A. "Chair" means the chair of the Commission and includes the vice chair or acting chair.

B. "Confidential hearing" means a hearing at which allegations of misconduct or disability are presented to a hearing panel or masters for resolution.

C. "Contract investigator" means a person with whom a contract exists for the performance of investigative services.

D. "Examiner" means a lawyer designated by the Commission to present evidence at a confidential hearing.

E. "Formal charges" means the specific allegations of misconduct or disability identified by the Commission at the conclusion of a full investigation and upon which further proceedings will be conducted.

F. "Formal complaint" means the written document that formally charges a judge with misconduct or disability.

G. "Full investigation" means that portion of an investigation in which the judge is invited to respond in writing to specific allegations identified by the Commission. A full investigation may also include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff, the judge and other witnesses; and inspection of physical facilities or objects.

H. "Hearing panel" means a panel of at least six members of the Commission designated to conduct a confidential hearing.

I. "Masters" means the special masters appointed by the Commission to conduct a confidential hearing.

J. "Misconduct" means a violation of the Utah Code of Judicial Conduct or Section 78A-11-105(1)(a), (b), (c), or (e) of the Utah Code.

K. "Preliminary investigation" means that portion of an investigation conducted upon receipt of a written complaint or upon authorization of the Commission. A preliminary investigation may include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff and other witnesses; and inspection of physical facilities or objects.

L. "Presiding master" means the special master designated to preside over any hearing conducted by masters.

M. "Proceeding" means all steps in the Commission's discipline and disability process.

N. "Record" means all documents required by statute to be submitted to the Utah Supreme Court.

O. "Supreme Court" means the Utah Supreme Court.

R595-1-2. Jurisdiction.

A. Judges. The Commission has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge.

B. Former judges. The Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred during the judicial appointment process or during service as a judge if a complaint is received before the judge left office.

R595-1-3. Confidentiality.

Confidentiality of Commission proceedings and records is governed by the Constitution of Utah and applicable state statute.

R595-1-4. Ex Parte Communications.

Commissioners shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or judges.

R595-1-5. Attendance at Commission Meetings.

Commission members may attend Commission meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

R595-1-6. Records Classification and Retention.

(Reserved.)

KEY: judicial conduct commission
February 1, 2005 **Art. VIII, Sec. 13**
Notice of Continuation January 14, 2010 **78A-11-102 through 78A-11-113**

R595. Judicial Conduct Commission, Administration.
R595-2. Administration.
R595-2-1. Executive Committee.

A. There is hereby established an executive committee of the Commission, comprised of the following three members of the Commission, all elected by the Commission: one legislator, one judge or member of the Utah State Bar, and one public member. The Commission chair shall serve as one of the members of, and as chair of, the executive committee.

B. The terms of committee members shall be two years. Committee members may be elected to subsequent terms.

C. The executive committee may:

1. recommend to the Commission the hiring or termination of the executive director;

2. hire and terminate the employment of other Commission staff;

3. approve the contracts of contract investigators;

4. recommend to the Commission salary increases for the executive director and other Commission staff;

5. investigate and resolve complaints against the executive director or Commission staff; and

6. perform other administrative duties as assigned by the Commission.

R595-2-2. Terms of Commission Chair and Vice Chair.

The terms of the Commission chair and vice chair shall be two years. The chair and vice chair may be elected to subsequent terms.

R595-2-3. Duties of Executive Director.

A. The executive director shall:

1. receive, acknowledge receipt of, and review complaints, refer complaints as provided by statute, conduct preliminary investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission regarding further proceedings or the disposition of complaints, conduct full investigations or file formal charges when directed to do so by the Commission, and act as examiner;

2. maintain records of the Commission's operations and actions;

3. compile statistics to aid in the administration of the Commission's operations and actions;

4. prepare and distribute an annual report of the Commission's operations and actions;

5. prepare the Commission's budget for submission to the Commission and the Legislature, and administer the funds;

6. subject to the approval of the Commission or the executive committee, hire and terminate Commission staff and enter into contracts with contract investigators;

7. direct the operations of the Commission's office, and supervise other members of the Commission's staff and contract investigators;

8. with the Commission's approval, engage experts in connection with proceedings;

9. make available to the public, the laws, rules and procedures affecting the Commission and its operations;

10. consider requests for extensions of time periods established by Commission rule, and may, upon a showing of good cause, grant such requests for a period of time not to exceed 60 days in the aggregate; and

11. perform other duties at the direction of the Commission.

B. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.

KEY: judicial conduct commission
September 1, 2007 **Art. VIII, Sec. 13**

Notice of Continuation January 14, 2010 **78-8-100 through 78-8-108**

R595. Judicial Conduct Commission, Administration.
R595-3. Procedure.
R595-3-1. Proof.

Formal charges shall be established by a preponderance of the evidence.

R595-3-2. Applicability of Other Rules.

Except as otherwise provided in Commission rule, the Utah Rules of Evidence apply in all proceedings. Except as otherwise provided in Commission rule, the Utah Rules of Civil Procedure do not apply in Commission proceedings.

R595-3-3. Right to Counsel.

A judge shall be entitled to retain and have the assistance of counsel at every stage of the proceedings.

R595-3-4. Service.

Service of a formal complaint shall be made by personal service or certified mail upon the judge or judge's counsel. Service of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-3-5. Subpoena Power.

The issuance and service of subpoenas for Commission proceedings is governed by Section 78A-11-113 of the Utah Code.

R595-3-6. Effect of Judge's Resignation or Retirement during Proceedings.

If a judge resigns or retires during the proceedings, the Commission shall determine whether to proceed or dismiss the proceedings.

R595-3-7. Investigation.

A. Preliminary Investigation.

1. The executive director shall review all written complaints, and shall, regardless of whether the allegations contained therein would constitute misconduct or disability if true, conduct a preliminary investigation.

2. When any other complaint is received, the executive director shall summarize and submit the complaint in writing to the Commission, but shall not conduct a preliminary investigation unless authorized to do so by the Commission.

3. The scope of the preliminary investigation shall be determined by Commission rule and the assigned investigator, subject to the direction of the executive director.

4. Upon completion of the preliminary investigation, the investigator shall recommend a full investigation if there is reasonable cause to support a finding of misconduct or disability. In all other cases, the investigator shall recommend that the proceedings be dismissed.

B. Full Investigation. Within ten days after a full investigation is authorized by the Commission, the executive director shall notify the judge that a full investigation has been authorized. The notice shall:

1. inform the judge of the allegations being investigated and the canons or statutory provisions allegedly violated;

2. inform the judge that the investigation may be expanded if appropriate;

3. invite the judge to respond to the allegations in writing within 20 days; and

4. include a copy of the complaint, the preliminary investigation report(s), and any and all other documentation reviewed by the Commission in determining whether to authorize a full investigation.

R595-3-8. Formal Charges.

The Commission may, upon reasonable cause to support a finding of misconduct or disability, direct the executive director to file a formal complaint. The formal complaint shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal complaint with the Commission, cause a copy to be served upon the judge or judge's counsel, and file proof of service with the Commission.

R595-3-9. Pre-Hearing Procedures.

A. Answer. Within 20 days after service, the judge may file an answer to the formal complaint.

B. Scheduling of Confidential Hearing. After receipt of the judge's answer or after expiration of the time to answer, the hearing panel or masters shall schedule a confidential hearing and notify the judge of the date, time, and place of the confidential hearing.

C. Witnesses and Exhibits. Not later than 20 days before the confidential hearing, the examiner and the judge shall: confer and attempt to agree upon uncontroverted and refuted facts and uncontested and contested issues of law; and exchange all proposed exhibits and a list of all potential witnesses.

D. Exculpatory Evidence. The examiner shall provide the judge with exculpatory evidence relevant to the formal charges.

E. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

F. Failure to Disclose. The hearing panel chair or presiding master may preclude either party from calling a witness at the confidential hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

R595-3-10. Discipline by Consent.

At any time after the filing of formal charges and before final disposition by the Commission, the judge may, with the consent of the examiner, admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission for action.

R595-3-11. Confidential Hearing.

A. Authority of Hearing Panel Chair or Presiding Master. The hearing panel chair or presiding master shall rule on all motions and objections raised at the confidential hearing, may limit the time allowed for the presentation of evidence and arguments, may bifurcate any and all issues to be presented, and may make any and all other rulings regarding the procedure not contrary to statute or Commission rule.

B. Hearing Procedures.

1. All testimony shall be under oath.

2. The examiner and the judge shall be permitted to present evidence and produce and cross-examine witnesses, present rebuttal evidence and produce and cross-examine rebuttal witnesses, and summarize the evidence and legal issues.

3. Confidential hearings shall be recorded by a certified court reporter or other means used or allowed by courts of record in this state.

4. Panel hearing members or masters may ask questions of any witness or the judge.

5. Immediately following the conclusion of the evidence and arguments, the hearing panel or masters shall deliberate and make a decision. Any such decision shall require a majority of the hearing panel or masters participating in the confidential hearing.

C. Post-Hearing Procedures if the Decision is to Dismiss the Formal Charges. The hearing panel chair or presiding master shall prepare and sign an order of dismissal, and shall serve the same upon the judge.

D. Post-Hearing Procedures if the Decision is to Impose any Level of Sanction or Involuntary Retirement.

1. Within 60 days from the conclusion of deliberations:

a. the hearing panel chair or presiding master shall prepare a memorandum decision, which must be approved by a majority of the hearing panel or masters participating in the confidential hearing, then signed by the hearing panel chair or presiding master and served on the examiner and the judge;

b. The examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision; and

c. The findings of fact, conclusions of law, and order shall be approved and signed by the hearing panel chair or presiding master, and served on the judge.

2. The judge shall have ten days, after service of the findings of fact, conclusions of law, and order, to lodge any objections with the Commission. If no objections are lodged, the executive director shall submit the record to the Supreme Court upon the expiration of the objection period. If objections are lodged, the Commission may either resolve the objections or refer them to the Supreme Court without resolution, along with the record.

3. A copy of the record shall be provided to the judge at no cost.

R595-3-12. Amendments to Formal Complaint or Answer.

At any time before the hearing panel chair or presiding master signs the findings of fact, conclusions of law, and order, the formal complaint or answer may be amended to conform to the proof or to allege additional facts. If the formal complaint is amended, the judge shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-3-13. Reinstatement of Proceedings after Dismissal.

A. Reinstatement upon Request by Complainant.

1. If the Commission dismisses the proceedings at any time prior to the commencement of a confidential hearing, the complainant may, within 30 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

3. A determination not to reinstate the proceedings is not appealable.

B. Reinstatement upon Request by Executive Director.

1. If the Commission dismisses the proceedings at any time prior to the filing of formal charges, the executive director may, at any time upon the receipt of newly discovered evidence, request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

R595-3-14. Proceedings Involving Allegations of Mental or Physical Disability.

A. Initiation of Disability Proceeding. A disability proceeding may be initiated: by written complaint; by a claim of inability to defend in a disciplinary proceeding; by an order of involuntary commitment or adjudication of incompetency; or upon authorization by the Commission upon the receipt of an unwritten complaint as provided in statute or Commission rule.

B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with Commission rule, except:

1. the purpose of disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions; and

2. all of the proceedings shall be confidential.

KEY: judicial conduct commission
February 1, 2005 Art. VIII, Sec. 13
Notice of Continuation January 14, 2010 78A-11-101 through 78A-11-113

R595. Judicial Conduct Commission, Administration.
R595-4. Sanctions.
R595-4-1. Dismissals with Warning or on Conditions.

A. The Commission may dismiss a complaint or formal complaint with a warning or on conditions of no further misbehavior if:

1. the judge stipulates that the conduct complained of has occurred;

2. the Commission finds that the stipulated conduct constitutes misconduct; and

3. the Commission finds that the misconduct is troubling but relatively minor misbehavior and that no public sanction is warranted.

B. The Commission will not dismiss a complaint or formal complaint with a warning or on conditions of no further misbehavior if:

1. the Commission finds that a public sanction is warranted;

2. the Commission has previously dismissed a complaint or formal complaint against the judge on conditions of no further misbehavior and the current misconduct violates such conditions; or

3. the Commission finds that the current misconduct is the same or similar to misconduct established from a previous complaint or formal complaint that was dismissed with a warning or on conditions of no further misbehavior.

R595-4-2. Sanctions Guidelines.

In determining an appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

A. the nature of the misconduct;

B. the gravity of the misconduct;

C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public, and the source of the dissemination of information;

D. the extent to which the judge has accepted responsibility for the misconduct;

E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;

F. the length of the judge's service on the bench;

G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;

H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and

I. the number and type of previous sanctions imposed against the judge.

KEY: judicial conduct commission
February 10, 2006 Art. VIII, Sec. 13
Notice of Continuation January 14, 2010 78-8-101 through 78-8-108

R612. Labor Commission, Industrial Accidents.
R612-13. Proceedings to Impose Non-Reporting Penalties Against Employers.
R612-13-1. Authority.

This rule is enacted under authority of U.C.A. Sections 34A-1-104(1) and 63G-4-202(1) and is applicable to proceedings under 34A-2-407 to assess a penalty against an employer who does not timely report an industrial accident.

R612-13-2. Designation as Informal Proceedings.

Initial proceedings to assess such penalty are hereby designated as informal adjudicatory proceeding, while all subsequent proceedings with respect to assessment of such penalty are hereby designated as formal proceedings.

KEY: workers' compensation, administrative procedures, reporting, penalties
January 12, 2010

34A-1-104(1)
34A-2-101 et seq.
34A-3-101 et seq.
63G-4-202(1)
78B-8-402
78B-8-404

R655. Natural Resources, Water Rights.
R655-3. Reports of Water Right Conveyance.
R655-3-1. Scope and Purpose.

These rules are issued pursuant to Section 73-1-10 which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the amount of water use allowed by the water right expressed in terms of the purpose(s) to which the water may be applied. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated by the water right (e.g. 40 acres).

CHANGE APPLICATION - as allowed by Section 73-3-3, any person entitled to the use of water may make permanent or temporary changes in the point of diversion, place of use, or nature of use of a water right by making application upon forms furnished by the state engineer

DIVERSION LIMIT - the total volume of water in acre feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to meet the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

PROFESSIONAL - for the purposes of this rule, a person, as specified in Section 73-1-10, who is licensed in Utah as an attorney, a professional engineer, a title insurance agent, or a professional land surveyor.

REPORT OF CONVEYANCE - a report of water right conveyance to the state engineer as required by Section 73-1-10.

R655-3-3. When a Water Right Owner is Authorized to Prepare a Report of Conveyance.

A water right owner may prepare a Report of Conveyance without the certification of a professional in the situations described below in subsections 3.2, 3.3, and 3.4. In all other situations, a Report of Conveyance must be prepared by or under the direct supervision of, and certified by, a professional.

3.1 On each of the documents (deed, marriage certificate, divorce decree, death certificate, or probate document) required in the situations described in subsections 3.2, 3.3, and 3.4, the name appearing on the document (the grantor in the case of a deed) must be exactly the same as the name of the water right owner as shown on the division's records. If there are differences in the names, the discrepancy may be addressed by attaching to the Report of Conveyance affidavits executed by the appropriate parties asserting that the persons named are one and the same.

3.2 Ownership changes which involve simple water rights conveyances.

3.2.1 A deed which conveys an entire water right and which specifically identifies the water right being conveyed by the state engineer's water right number (for example 43-1638).

3.2.2 A deed which conveys more than one water right and which meets the criteria of paragraph 3.2.1 for each water right conveyed.

3.2.3 A deed which conveys a portion of a water right and which conforms to the following suggested Water Right Deed format:

3.2.3.1 The deed must be clearly labeled "WATER RIGHT DEED".

3.2.3.2 The deed must contain standard warranty deed or quit claim deed conveyance language.

3.2.3.3 The deed must be limited to the conveyance of water rights and must convey only one water right.

3.2.3.4 The deed must contain all of the information necessary to clearly identify the water right conveyed. The deed must show the water right number. If this interest in the water right has been segregated from another water right, the deed must show the currently assigned water right number. The water right number will be the basis for identifying the water right, however, the deed may also show other numbers pertinent to the water right such as a diligence claim number, an application number, an award number from a decree, etc.

3.2.3.5 The deed must name a grantee. (The name of the grantee as shown on the deed will be the name used to update the division's records.)

3.2.3.6 The deed must show the current mailing address for the grantee. (This will be the address to which the division will mail official notices regarding administrative actions on the water right.)

3.2.3.7 The deed must describe the beneficial uses conveyed by type and amount. For example:

TABLE 1

Irrigation	38.50 acres
Stockwatering	10 cattle or equivalents
Domestic	1 family

(The division will use the beneficial use information to update the water right ownership.) The volume of water conveyed in acre feet or the flow rate conveyed in cubic feet per second or gallons per minute, is not required on the deed. However, if it is shown on the deed, it must be consistent with the beneficial use(s) shown on the deed.

3.2.3.8 If there are multiple grantors and/or multiple grantees, the deed must clearly indicate the interest conveyed from each grantor and/or the interest acquired by each grantee.

3.2.3.9 The deed must list by number any approved or unapproved pending change applications which are associated with the water right. The deed must also describe the type and amount of beneficial use associated with each of these applications that is being conveyed with the water right. For example:

TABLE 2

Irrigation	20.50 acres
Stockwatering	5 cattle or equivalents
Domestic	1 family

3.2.3.10 The deed must be signed by all grantors, notarized, and recorded in the county where the water is diverted and in the county where the water is used. If the water is diverted or used in more than one county, the deed must be recorded in each county where the water is diverted or used.

3.2.4 Reports of Conveyance prepared by water right owners may be based on more than one deed in the chain of deeds as long as each deed complies with the requirements of 3.2.1, 3.2.2, or 3.2.3.

3.3 Name changes which are due to marriage or divorce

3.3.1 In the case of marriage, a water right owner's name may be changed from the prior or maiden name to the married name. The Report of Conveyance must be accompanied by a copy of the marriage certificate.

3.3.2 In the case of divorce, a water right owner's name may be changed from the married name to the prior or maiden name. The Report of Conveyance must be accompanied by a copy of the divorce decree.

3.3.3 To add or remove a spouse, the water right ownership may be updated according to the procedure described in 3.2 above.

3.4 Ownership changes which are due to the death of the water right owner

3.4.1 When the water right is held in joint tenancy, the ownership may be updated to remove the name of the deceased

joint tenant. The Report of Conveyance must be accompanied by a copy of the death certificate.

3.4.2 When the water right is not held in joint tenancy and there is only one successor to the deceased and the probate document clearly defines the distribution of the estate, the ownership may be updated to the successor. The Report of Conveyance must be accompanied by a copy of the probate document.

R655-3-4. Content of the Report of Conveyance.

A Report of Conveyance must have sufficient documentation presented in a standard statement format to demonstrate the chain of title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right. The Report of Conveyance shall be submitted on forms provided by the state engineer. The information required in a Report of Conveyance for most ownership transactions includes the information described below and any other information deemed necessary by the state engineer to process the report.

4.1 Information required on all Reports of Conveyance

4.1.1 The type of conveyance document.

4.1.2 The date the document was signed and the county recorder information.

4.1.3 The grantor name(s) as it appears on the conveyance document.

4.1.4 The grantee name(s) exactly as it appears on the conveyance document.

4.1.5 The current mailing address of the grantee.

4.1.6 Any pending change applications or non-use applications associated with the conveyance document.

4.1.7 Any special conditions of the conveyance document

4.1.8 Unless the Report of Conveyance is prepared by the water right owner as allowed by R655-3-3, it must include a certification by a professional stating that (s)he has prepared or supervised the preparation of the Report of Conveyance, that the report is true and accurate to the best of the preparer's knowledge, and that the attached documents evidence the ownership interest of the grantee. The certification must include the professional's name, profession, license number, and phone number. The certification also requires the name and phone number of the grantee.

4.2 In addition to the information described in 4.1, a Report of Conveyance which involves conveyance of only a portion of the water right must also include the following information:

4.2.1 The amount and type of each beneficial use that was conveyed by this document.

4.2.2 If applicable, the amount of each type of beneficial use associated with any pending change that was conveyed by the documents.

4.2.3 The diversion limit conveyed as applicable (see sub section 3.2.3.7).

4.3 The supporting information which must accompany each Report of Conveyance include the following items:

4.3.1 Maps (if needed to establish water right appurtenance to land or to establish the portion of the water right conveyed by appurtenance)

4.3.2 Any explanatory narrative deemed necessary by the certifier.

4.3.3 Any necessary affidavits

4.3.4 Copies of all conveyance documents listed on the summary sheet.

4.3.4.1 Conveyance documents (deeds, etc.) must bear county recorder's stamp with all recording information (document number, book, page, recording date, etc.).

4.3.4.2 Documents must be legible.

4.3.4.3 Documents must be arranged in chronological order by recording date/number.

R655-3-5. Procedures for Processing a Report of Conveyance.

5.1 Upon receiving a Report of Conveyance and the prescribed fee, the state engineer shall review the Report to see that it is acceptably complete. A Report of Conveyance is acceptably complete if the Report includes all the information and material required in section R655-3-4 which is necessary to update the water right ownership records of the state engineer to the name of the person claiming water right ownership and which does not conflict with other water right ownership information of record with the state engineer.

5.2 If a Report of Conveyance is acceptably complete, the state engineer shall file the Report and update the water right ownership records according to the Report.

5.3 If a Report of Conveyance is not acceptably complete, the state engineer shall return the Report with an explanation of why it is not acceptably complete. The state engineer may not file the Report and update the water right ownership records unless the Report is resubmitted with the necessary information and material.

KEY: water right, conveyance, ownership
July 1, 2000 **73-1**
Notice of Continuation January 27, 2010

R708. Public Safety, Driver License.
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.
R708-41-1. Authority.
This rule is authorized by Section 53-3-104.

R708-41-2. Purpose.
The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

R708-41-3. Definitions.
(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.
(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.
(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.
(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.
(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.
(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.
(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):
(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;
(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;
(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;
(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;
(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;
(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;
(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or
(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.
(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):
(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE)which may provide evidence of both legal/lawful presence; or
(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.
(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English:
(i) Church records;
(ii) Court records;
(iii) Driver License;
(iv) Employee ID;
(v) Insurance ID card;
(vi) Matricular Consular Card (issued in Utah);
(vii) Mexican Voter Registration card;
(viii) School records;
(ix) Utah DPC;
(x) Other evidence considered acceptable by the division director or designee.
(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:
(a) ITIN card issued by the Internal Revenue Service (IRS); or
(b) Document or letter from the IRS verifying the ITIN.
(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:
(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:
(i) United States citizen;
(ii) National; or
(iii) Legal Permanent Resident Alien.
(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:
(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;
(ii) Pending or approved application for asylum in the United States;
(iii) Admission into the United States as a refugee;
(iv) Pending or approved application for temporary protected status in the United States;

(v) Approved deferred action status; or

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status; or

(F) Pending application for adjustment of status to legal permanent resident or conditional resident.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed and has not been laminated or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9)and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;

(c) Current mortgage or rental contract;

(d) Major credit card bill (dated within 60 days);

(e) Property tax notice (statement or receipt dated within one year);

(f) School transcript (dated within 90 days);

(g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;

(h) Valid Utah vehicle registration or title;

(i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card.

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or

(b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or

(c) Two identity documents as outlined in definition (6)(c)

for undocumented immigrants; and

(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and

(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the

division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

R708-41-5. Exceptions.

This rule does not apply when issuing driver license certificates or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

R708-41-6. Document Storage.

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access.

KEY: acceptable documents, identification card, license certificate, limited-term license certificate

January 25, 2010 **53-3-104**
53-3-205
53-3-214
53-3-410
53-3-804

R805. Regents (Board of), University of Utah, Administration.
R805-4. Illegal, Harmful, and Disruptive Behavior on University of Utah Property.
R805-4-1. Purpose.

1. To identify activities and behaviors that are prohibited on the University of Utah campus and its properties.

2. To identify possible sanctions for persons who engage in such behaviors and the process for enforcement and discipline.

R805-4-2. Definitions.

1. "University of Utah Community Member" means a University of Utah faculty member, staff member, student or any other person who is invited to participate in University of Utah events and activities.

2. "University property" means the university campus and any other property owned, operated or controlled by the University of Utah and specifically includes the University's grounds, buildings and roadways.

R805-4-3. Prohibited Activities.

A. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that violate state or federal criminal laws.

B. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that violate the policies, procedures, regulations and rules of the University of Utah.

C. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that are violent, obscene or disorderly.

D. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that obstruct, disrupt or otherwise interfere with the University's educational process, including but not limited to its academic, business, administrative and recreational meetings and processes.

E. No person may enter onto, or remain upon, University property that is not open to the general public absent a specific authorization or invitation by a University of Utah Community Member authorized to allow such entry.

F. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, stealing or using without authorization any real or personal property owned by the University of Utah or owned by a University of Utah Community Member.

G. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that injure, deface, damage or destroy any real or personal property owned by the University of Utah or owned by a University of Utah Community Member.

H. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that cause injury to a University of Utah Community Member.

I. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, verbal or physical conduct of a sexual nature toward a University of Utah Community Member that has the purpose or effect of unreasonably interfering with the individual's employment or education performance or creates an intimidating, hostile, or offensive environment for that individual's employment, education, living environment, or participation in a university activity.

J. No person may enter upon or remain upon University property, for the purpose of, or in the actual commission of, activities that interfere with another person's lawful and authorized access, ingress and egress to University property, including its grounds, buildings and roadways.

K. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that incite, support, encourage, aid or abet others to commit one or more of the activities listed in the paragraphs A-J above.

R805-4-4. Sanctions.

1. University students, university staff and university faculty who violate this rule may be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

2. Members of the public who violate this rule may be subject to one or more of the following sanctions:

a. Issuance of a citation for criminal trespass pursuant to Section 76-6-206;

b. Issuance of citation and temporary eviction from, and denial of access to, University property pursuant to Sections 76-8-701 through 76-8-718; and

c. Eviction from, and denial of access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

KEY: illegal behavior, disruptive behavior, harmful behavior, trespassing
January 7, 2010 **53B-2-106**
63G-4-102
76-8-701 et seq.

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
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 Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. 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 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) 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.

(a) Requests for review shall be directed to:

Executive Director

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

(ii) the nature and extent of the individual's disability;

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

(i) Internal Audit;

(ii) Appeals;

(iii) Economic and Statistical; and

(iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

(i) Administration;

(ii) Taxpayer Services;

(iii) Motor Vehicle;

(iv) Auditing;

(v) Property Tax;

(vi) Processing; and

(vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 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, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed 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 of a deficiency 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 of a claim for refund 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 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah

statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) 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 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) 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 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame

agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63G-4-302.

(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 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(2) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-

sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and

readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (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-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.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if all of the following conditions are met:

(a) the purpose of the meeting is to discuss a commission administrative rule;

(b) two commissioners are present at a single anchor location; and the number of separate connections for commissioners who are not present at the anchor location is no more than two.

(2)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (2)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and **68-3-8.5**
(3) United Parcel Service (UPS): **69-2-5**
(a) UPS Next Day Air; **42 USC 12201**
(b) UPS Next Day Air Saver; **28 CFR 25.107 1992 Edition**
(c) UPS 2nd Day Air;
(c) UPS 2nd Day Air A.M.;
(d) UPS Worldwide Express Plus; and
(e) UPS Worldwide Express.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
January 21, 2010 **10-1-405**
Notice of Continuation March 20, 2007 **41-1a-209**
52-4-207
59-1-205
59-1-207
59-1-210
59-1-301
59-1-302.1
59-1-304
59-1-401
59-1-403
59-1-404
59-1-501
59-1-502.5
59-1-602
59-1-611
59-1-705
59-1-706
59-1-1004
59-1-1404
59-7-505
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
59-12-114
59-12-118
59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63G-3-301
63G-4-102
76-8-502
76-8-503
59-2-701
63G-4-201
63G-4-202
63G-4-203
63G-4-204
63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)
68-3-7

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-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-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-13. Nonresident's Share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) The provisions of this rule apply to a pass-through entity that is not an S corporation. For provisions that apply to a pass-through entity that is an S corporation, see rule R865-9I-56.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

(a) name;

(b) address;

(c) social security number;

(d) percentage of ownership in pass-through entity;

(e) Utah income attributable to that pass-through entity taxpayer.

(3) A pass-through entity shall calculate the tax it withholds on behalf of its nonresident pass-through entity

taxpayers by:

(a) multiplying the income of the pass-through entity attributable to nonresident pass-through entity taxpayers by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (3)(a) any amounts withheld from the pass-through entity under Section 59-6-102 attributable to nonresident pass-through entity taxpayers.

(4) The pass-through entity'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.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

(a) a federal Schedule H; or

(b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of $1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-9I-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 63M-1-401 through 63M-1-414.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

(A) that is transported outside of the enterprise zone; and

(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Taxpayer" means the person claiming the tax credits in section 63M-1-413.

(g) "Transfer" pursuant to Section 63M-1-411, 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 the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection (4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection (4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

(4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63M-1-413(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.

(5) 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.

(6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63M-1-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(7) 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.

(8) 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.

(9) 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-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-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 63M-1-413.

Taxpayers shall deduct credits authorized by Sections, 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413 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 Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of 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:

(a) the beginning balance in the account;

(b) the amount contributed to the account;

(c) the account's earnings;

(d) distributions for qualified medical expenses;

(e) distributions for non-medical expenses not subject to penalty;

(f) distributions for non-medical expenses subject to penalty;

(g) the amount of penalty required to be withheld and remitted to the state;

(h) the account administrator's administrative fee charged to the account; and

(i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-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-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before 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 Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

(1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

(2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-9I-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. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the greatest possible credit.

R865-9I-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.

R865-9I-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

(1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.

(2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

(3) A pass-through entity that is an S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

(4) For purposes of Title 59, Chapter 10, Part 14:

(a) the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to

determine the numerators of the property, payroll, and sales factors; and

(b) the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

(5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-9I-56. Determination of Amounts Withheld by a Pass-Through Entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) The provisions of this rule apply to a pass-through entity that is an S corporation. For provisions that apply to a pass-through entity that is not an S corporation, see rule R865-9I-13.

(2) A pass-through entity that is an S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident pass-through entity taxpayer:

(a) name;

(b) address;

(c) social security number;

(d) percentage of S corporation held; and

(e) amount of Utah tax paid or withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the Schedule K labeled Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions;

(ii) total foreign taxes paid or accrued; and

(iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity that is an S corporation shall calculate the tax it withholds on behalf of its nonresident pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity by the rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld under Section 59-6-102.

KEY: historic preservation, income tax, tax returns, enterprise zones

January 21, 2010
Notice of Continuation March 20, 2007

31A-32A-106
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
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59-10-1023
59-10-1106
59-10-1403
59-10-1403.2
59-10-1405
59-13-202
59-13-302
63M-1-401 through 63M-1-414

R895. Technology Services, Administration.
R895-9. Utah Geographic Information Systems Advisory Council.
R895-9-1. Purpose.

The purpose of this rule is to establish an advisory council to coordinate statewide GIS data efforts for collection, creation, and access, and to mutual collaboration by state entities.

R895-9-2. Authority.

The rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code.

R895-9-3. Scope of Application.

(a) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents and institutions of higher education, are to be included within the scope of this rule.

(b) This rule also provides for the organizational chairmanship and membership.

R895-9-4. Definitions.

(a) GIS data means any electronic data with location attributes that can be used by computer-based geographic information systems.

(b) GISAC means the Utah Geographic Information Systems Advisory Council established by this rule.

R895-9-5. Advisory Council Responsibilities.

(a) There is a geographic information system advisory council (GISAC) established and organized under the authority of the Chief Information Officer (CIO). The Council shall be chaired by the Manager of the Automated Geographic Reference Center (AGRC).

(b) The responsibilities of the council include:

(i) Serve as a coordinating and collaboration body for the collection, creation, and access of statewide GIS data, and;

(ii) Recommend to the State CIO any GIS policies or standards it believes should be considered by the CIO for implementation, and such as may need to be reviewed for promulgation as administrative rules.

(iii) Submit a progress report to the CIO by September 30 of each year.

R895-9-6. Council Membership and Organization.

(a) The Manager of the AGRC or designee.

(b) The Council shall meet bi-monthly or as determined by the Chair.

(c) The Council shall be composed of one GIS representative from each participating state entity, and such invited GIS representatives from local government, colleges/universities, and federal agencies as are selected by the chair.

R895-9-7. Rule Compliance Management.

A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

KEY: IT standards council, IT bid committee, technology best practices, repository
March 9, 2005 **63F-1-206**
Notice of Continuation January 20, 2010 **63-46a-3**

R930. Transportation, Preconstruction.
R930-6. Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.
R930-6-1. Incorporation by Reference.

In order to implement its federally-mandated responsibility to ensure the safe use and protection of federal-aid highways, the department incorporates by reference the Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, January 2006 edition, copies of which are available at the department's headquarters, 4501 South 2700 West, Salt Lake City, Utah 84114, and on the department's Internet site, http://www.udot.utah.gov/main/uconowner.gf?n=200402231315131. The provisions of this Manual also apply to non-federal aid state highways.

KEY: utility rules, utilities access

July 28, 2006	**72-3-109**
Notice of Continuation November 29, 2006	**72-6-116**
	72-7-102
	72-7-108

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client;

(g) a copy of the two party check on a need to know basis; and

(h) the month the client is scheduled for review or reestablishment.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is availableduring;

(i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or

(ii) the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's

administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90

days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 9 p.m. and 6 a.m. except;

(a) for a child under the age of 24 months old,

(b) to accommodate a special needs child, or

(c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of

the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

(5) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized funds were accepted from a client or taken as provided in this section but no CC services were provided during the month, the Department will send a demand letter to the provide establishing the overpayment and the provider will be given 30 days repay the Department or enter into an installment payment agreement. Under an installment agreement, the provider must agree to make monthly payments and pay the full amount within a maximum of six months of the date of the demand letter. If full payment is not received within six months, the provider may be referred for criminal prosecution and will no longer be an approved provider as provided under R986-700-706(4). This is true even if the provider has never removed or retained CC funds in the past.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the

child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the

health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

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R994. Workforce Services, Unemployment Insurance.
R994-106. Combined Wage Claims.
R994-106-101. General Definition.

(1) An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. He must file a combined wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, he has the right to reject a combined-wage claim and file against a state in which he is separately eligible or to cancel the combined wage claim and file no claim.

(2) Section 35A-4-106 provides for the wages earned in other states to be used to qualify for unemployment insurance benefits. Many of the restrictions and guidelines contained in this Rule are required by federal regulations which govern the establishment and payment of unemployment benefits when a claimant uses wages earned outside the state or his residence at the time the claim is filed. If there is a conflict between this Rule and federal regulations, the federal regulations will be followed.

R994-106-102. Definition of Terms.

(1) Agent State.

Agent state means any state in which an individual files a claim for benefits from another state or states.

(2) Combined-Wage Claim.

A combined-wage claim is a claim using wage credits from more than one state.

(3) Combined-Wage Claimant.

A claimant who uses wages from more than one state to establish monetary entitlement to benefits.

(4) Commuter.

Commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(5) Employment and Wages.

"Employment" refers to all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(6) Interstate Benefit Payment Plan.

This is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(7) Liable State.

The liable state is the same as the paying state.

(8) Paying State.

The paying state is the state against which the claimant is filing that actually issues the benefit checks.

(9) State.

State includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(10) State Agency.

The agency which administers the unemployment compensation law of a state.

(11) Transferring State.

A transferring state is one in which the claimant had covered employment and wages within the base period of the paying state that can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined wage claim.

R994-106-103. Restrictions on Combined Wage Claims.

(1) Any unemployed individual who has had covered employment in two or more states may file a combined wage claim unless:

(a) he has established a claim under any other state;

(b) the benefit year has not ended;

(c) and there are still unused benefit rights.

(2) Unused Benefit Rights.

A claimant will not be considered to have unused benefit rights on a prior claim if:

(a) all benefits have been exhausted, or

(b) benefits have been denied by a seasonal restriction, or

(c) benefits have been postponed for an indefinite period or for the remainder of the benefit year. A disqualification imposed because a claimant is not able to work or available for work is not considered a denial of a claimant's benefit rights.

(3) Use of Wages in Paying State.

If an individual files a combined wage claim, all wages and employment in all states during the base period of the paying state must be included. He may not select a paying state but must accept that state which is determined under Subsection 35A-4-106(1)(b) and R994-106-103.

(4) Base Period for a Combined Wage Claim.

The base period for a combined wage claim means the "base period" as established in the paying state.

(5) Benefit Year for a Combined Wage Claim.

The benefit year for a combined wage claim is the "benefit year" of the paying state.

R994-106-104. Determining the Paying State in Combined Wage Claim (CWC) Claims.

(1) The paying state is the state in which the claimant elects to file a CWC, provided the claimant has employment and wages in that state's base period and the claimant qualifies for unemployment under the law of that state using combined employment and wages. The claimant is responsible for deciding the state against which to file a CWC.

(2) If a claimant files a CWC in Utah but is not monetarily eligible for benefits against Utah, Utah will advise the claimant of Utah's qualifying requirements and his or her potential eligibility for benefits, if any, under Utah law. The claimant will also be told that he or she has the option to file in any other state/s where he or she has employment and wages. Utah will advise the claimant that state laws vary and there are differences in weekly benefits amounts and other qualifying requirements in different states. If the claimant wishes to explore options with any other state/s, Utah will provide the claimant with contact information for that/those state/s.

(3) If a claimant is found to be monetarily ineligible in Utah, the claimant can file in another state where he or she has employment and wages in that state's base period. If a claimant was found monetarily ineligible in another state and then files in Utah, Utah can use the effective date of the original claim, provided the claimant filed within the appeal period from the original state's monetary denial.

R994-106-105. Responsibilities of Utah when Transferring Wages.

(1) Transfer of Employment and Wages.

Wages earned in Utah in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state. Such wages will be transferred without restriction as to their use for determination and benefit payments under the provisions of the Paying state's law.

(2) Employment and Wages Not Transferrable.

Wages earned in Utah will not be transferred if the employment and wages have been:

(a) transferred to any other paying state and have not been returned unused, or which have been previously used as the basis of a monetary determination which establishes a benefit year; or

(b) canceled or are otherwise unavailable to the claimant as a result of a monetary determination made prior to its receipt of the request for transfer, if such determination has become final or is subject to a pending appeal. If the appeal is finally decided in favor of the combined wage claimant, any employment and wages determined eligible for use as wages in establishing monetary eligibility will be transferred to the paying state and any necessary redetermination will be made by the paying state.

R994-106-106. Non-Monetary Eligibility Determination.

When a combined wage claim is filed, the law and eligibility requirements of the paying state apply, except the paying state may not determine an issue that has previously been adjudicated by the transferring state. Such exception will not apply, however, if the transferring state's determination of the issue resulted in making the combined-wage claim possible as provided in 20 CFR 616.8 of the Code of Federal Regulations.

R994-106-107. Conditions for Withdrawing a Combined Wage Claim.

(1) Because of the complexities of combining wages, disadvantages to the claimant may not be apparent until after the monetary determination has been received. Therefore, the claimant has the right to withdraw from a combined wage claim anytime before the monetary determination of the paying state becomes final. The claimant's right to withdraw is inherent and need not be supported by reasons, provided that he either:

(a) repays in full any benefits paid to him, or

(b) authorizes the state against which he will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

R994-106-108. Notification and Appeals.

(1) Notification.

A combined wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. If a transferring state refuses to transfer wages because the wage credits were canceled under a disqualification or because the work was not covered, the claimant will be sent an appealable determination by the transferring state.

(2) Protests and Appeals.

A protest of a monetary determination from a transferring state or from a paying state other than Utah may be made. If the paying state or any transferring state makes any decision, monetary or nonmonetary, adverse to a combined-wage claimant's interest, the claimant is entitled to a written determination and the right to request reconsideration or an appeal in accordance with the law of the state making the determination.

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