R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error.

(3) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(4) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(5) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(6) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(7) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a) and created under Subsection R156-1-404a.

(8) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(9) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(10) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(11) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(13) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(14) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(15) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsection 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(16) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(6).

(17) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(18) "Probation" means disciplinary action placing terms and conditions upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(19) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(20) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(21) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (19)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(22) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(23) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (19)(a), placed on a license issued to an applicant for licensure.

(24) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(25) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(26) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(27) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(28) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(30) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Except as otherwise specified in writing by the director, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (p), (r) and (u).

(b) Bureau managers. The bureau manager over the occupation or profession involved shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (k), (q), (s), and (t).

(i) At the direction of the a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the format of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(o).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(3), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or

modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-204. Board and Committee Meetings Open to Public - Notice of Board Meetings.

(1) Board and committee meetings shall be open to the public except when closed in accordance with Section 52-4-5.

(2) The notice of board and committee meetings required by Section 52-4-6 shall be provided as follows:

(a) Not later than the last working day of January of each year, the division shall publish a list of its anticipated board and committee monthly meeting schedule in the State Bulletin.

(b) Not later than the last working day of each calendar month the division shall post in a prominent and appropriate place within the building occupied by the division, a calendar containing the date, time, and place of all board and committee meetings scheduled for the next succeeding month. In addition, the division shall provide a copy to the media.

(c) Not later than the close of business of the business day preceding a meeting of any board or committee, the division shall post in a prominent and appropriate place within the building occupied by the division, a copy of the agenda for the board or committee meeting.

R156-1-205. Advisory Peer Committees - Director to Appoint with Concurrence of Board - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The director shall appoint the members of peer committees established under Title 58 or Title R156. In appointing these members, the director shall give consideration to recommendations by members of the boards.

(2) The names of all persons appointed to peer committees shall be submitted to the appropriate board for confirmation or rejection. If an appointee is rejected by the board, the director shall appoint another person to the board for confirmation or rejection.

(3) Except for ad hoc peer committees whose members shall be appointed on a case-by-case basis, the term of office of peer committee members shall be for four years. The director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer committee is appointed every two years.

(4) No peer committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer committee until after the expiration of two years from the date of cessation of service.

(5) If a vacancy on a peer committee occurs, the director shall appoint a replacement to fill the unexpired term and submit the appointment to the appropriate board for confirmation or rejection. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) If a peer committee member fails or refuses to fulfill the responsibilities and duties of a peer committee member, including the attendance at peer committee meetings, the director in collaboration with the board may remove the peer committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(7) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(8) Unless otherwise approved by the division, peer committee meetings shall be held in the building occupied by the division.

(9) A majority of the peer committee members shall constitute a quorum and may act in behalf of the peer committee.

(10) Peer committees shall annually designate one of their members to serve as peer committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(11) Peer committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(12) Peer committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(13) Peer committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-204(3) through (13).

R156-1-301. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee who holds an active in good standing license under Title 58 may apply for inactive licensure status.

(2) The following licenses issued under Title 58 may not be placed on inactive licensure status:

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

(j) Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy;

(k) Licensed substance abuse counselor;

(l) Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor;

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

R156-1-308a. Renewal Dates.

The following renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Animal Euthanasia Agency	May 31	odd years
(4)	Alternate Dispute Resolution Provdr	September 30	even years
(5)	Analytical Laboratory	May 31	odd years
(6)	Architect	May 31	even years
(7)	Audiologist	May 31	odd years
(8)	Boxing Licensee	December 31	every year
(9)	Branch Pharmacy	May 31	odd years
(10)	Building Inspector	July 31	odd years
(11)	Burglar Alarm Security	July 31	even years
(12)	C.P.A. Firm	September 30	even years

(13)	Certified Shorthand Reporter	May 31	even years
(14)	Certified Dietitian	September 30	even years
(15)	Certified Nurse Midwife	January 31	even years
(16)	Certified Public Accountant	September 30	even years
(17)	Certified Registered Nurse Anesthetist	January 31	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Social Worker	September 30	even years
(21)	Construction Trades Instructor	July 31	odd years
(22)	Contractor	July 31	odd years
(23)	Controlled Substance Precursor Distributor	May 31	odd years
(24)	Controlled Substance Precursor Purchaser	May 31	odd years
(25)	Cosmetologist/Barber	September 30	odd years
(26)	Cosmetology/Barber School	September 30	odd years
(27)	Deception Detection	July 31	even years
(28)	Dental Hygienist	May 31	even years
(29)	Dentist	May 31	even years
(30)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(31)	Electrologist	September 30	odd years
(32)	Environmental Health Scientist	May 31	odd years
(33)	Factory Built Housing Dealer	September 30	even years
(34)	Funeral Service Director	May 31	even years
(35)	Funeral Service Establishment	May 31	even years
(36)	Health Care Assistant	November 30	even years
(37)	Health Facility Administrator	May 31	odd years
(38)	Hearing Instrument Specialist	September 30	even years
(39)	Hospital Pharmacy	May 31	odd years
(40)	Institutional Pharmacy	May 31	odd years
(41)	Landscape Architect	May 31	even years
(42)	Licensed Practical Nurse	January 31	even years
(43)	Licensed Substance Abuse Counselor	May 31	odd years
(44)	Marriage and Family Therapist	September 30	even years
(45)	Massage Apprentice, Therapist	May 31	odd years
(46)	Naturopath/Naturopathic Physician	May 31	even years
(47)	Nuclear Pharmacy	May 31	odd years
(48)	Occupational Therapist	May 31	odd years
(49)	Occupational Therapy Assistant	May 31	odd years
(50)	Optometrist	September 30	even years
(51)	Osteopathic Physician and Surgeon	May 31	even years
(52)	Out of State Mail Order Pharmacy	May 31	odd years
(53)	Pharmaceutical Administration Facility	May 31	odd years
(54)	Pharmaceutical Dog Trainer	May 31	odd years
(55)	Pharmaceutical Manufacturer	May 31	odd years
(56)	Pharmaceutical Researcher	May 31	odd years
(57)	Pharmaceutical Teaching Organization	May 31	odd years
(58)	Pharmaceutical Wholesaler/Distributor	May 31	odd years
(59)	Pharmacist	May 31	odd years
(60)	Pharmacy Technician	May 31	odd years
(61)	Physical Therapist	May 31	odd years
(62)	Physician Assistant	May 31	even years
(63)	Physician and Surgeon	January 31	even years
(64)	Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(65)	Podiatric Physician	September 30	even years
(66)	Pre Need Funeral Arrangement Provider	May 31	even years
(67)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(68)	Private Probation Provider	May 31	odd years
(69)	Professional Counselor	September 30	even years
(70)	Professional Employer Organization	September 30	every year
(71)	Professional Engineer	May 31	even years
(72)	Professional Land Surveyor	May 31	even years
(73)	Professional Structural Engineer	May 31	even years
(74)	Psychologist	September 30	even years
(75)	Radiology Practical Technician	May 31	odd years
(76)	Radiology Technologist	May 31	odd years
(77)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(78)	Registered Nurse	January 31	odd years
(79)	Respiratory Care Practitioner	September 30	even years
(80)	Retail Pharmacy	May 31	odd years
(81)	Security Personnel	July 31	even years
(83)	Social Service Worker	September 30	even years
(84)	Speech-Language Pathologist	May 31	odd years
(85)	Veterinarian	September 30	even years
(86)	Veterinary Pharmaceutical Outlet	May 31	odd years

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 90 days prior to the expiration date shown on of the licensee's license.

(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 automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall specify a renewal application due date at least 60 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in accordance with Subsection 58-1-308(4).

(5) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.

(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.

(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.

(9) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal During Pendency of Adjudicative Proceedings.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

R156-1-308e. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

(f) pay the established license renewal fee and the reinstatement fee.

R156-1-308f. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308g. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation.

R156-1-308h. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308i. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure; and

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered.

R156-1-404a. Diversion Advisory Committees Created - Impaneling of Committees - Appointment of Members - Terms of Office - Vacancies in Office - Removal of Members - Quorum Requirement - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) There is created diversion advisory committees of three members for each of the occupations or professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises.

(2) The term of office of each diversion committee member shall be for a period of three years; except that initial appointments to each diversion committee after adoption of these rules shall be staggered in that one appointment shall be one year, one appointment shall be for two years and one shall be for three years. Diversion committee members shall not be appointed to serve for more than two consecutive terms.

(3) No diversion committee member may serve more than two full terms, and no member who ceases to serve may again serve on the diversion committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a diversion committee occurs, the director shall appoint a replacement to fill the unexpired term in accordance with Section 58-1-404. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) The director may remove a member for reasonable cause with the concurrence of the executive director. Reasonable cause includes failing or refusing to fulfill the responsibilities and duties of an advisory committee member, including the attendance at diversion committee meetings. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) A chairman of each diversion committee shall be designated by the director from among the three members appointed to the diversion committee. That person shall be responsible for managing the work of the diversion committee in consultation with the director.

(7) Committees meetings shall only be convened following the referral of a licensee to the diversion committee.

(8) Unless otherwise approved by the division, diversion committee meetings shall be held in the building occupied by the division.

(9) A majority of the diversion committee members shall constitute a quorum and may act in behalf of the diversion committee.

(10) Diversion committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings, if any.

(11) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the charges against licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404(6) through (7).

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) The legal consequences of diversion are as described in Subsections 58-1-404(8) through (10).

(6) Reporting or release of information shall be in compliance with Subsection 58-1-404(9).

(7) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership; or

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation.

R156-1-503. Reporting Disciplinary Action.

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

KEY: diversion programs, licensing, occupational licensing
December 16, 1999 58-1-106(1)
Notice of Continuation June 2, 1997 58-1-308

R156. Commerce, Occupational and Professional Licensing.
R156-31c. Nurse Licensure Compact Rules.
R156-31c-101. Title.

These rules are known as the "Nurse Licensure Compact Rules".

R156-31c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31c, as used in Title 58, Chapter 31c or these rules:

(1) "Board", as used in these rules, means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Current significant investigative information", as used in these rules, is defined in Section 58-31c-102.

(3) "Information system", as used in these rules, means the coordinated licensure information system as defined in Section 58-31c-102.

(4) "Primary state of residence", as used in these rules, means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(5) "Public", as used in these rules, means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

R156-31c-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 31c.

R156-31c-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.

R156-31c-201. Issuing a License.

(1) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include:

(a) driver's license with a home address;

(b) voter registration card displaying a home address; or

(c) federal income tax return declaring the primary state of residence.

(2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.

(3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 30 day period in Subsection (2) shall be stayed until resolution of the pending investigation.

(4) The former home state license shall be expired and no longer valid upon the issuance of a new home state license.

(5) If a decision is made by the new home state denying licensure:

(a) The new home state shall notify the former home state within ten business days and the former home state shall take action in accordance with that state's laws and rules.

(b) The applicant shall cease practicing on the multi-state privilege in the state in which licensure was denied.

R156-31c-302. Limitations on Multi-state Licensure Privilege.

Home state Boards shall include in all licensure disciplinary orders and stipulation agreements that limit practice or require monitoring the requirement that the licensee subject to said order or stipulation will agree to limit the licensee's practice to the home state during the pendency of the order or stipulation. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

R156-31c-401. Information System.

(1) Levels of Access:

(a) The public shall have access to nurse licensure information limited to:

(i) the nurse's name;

(ii) jurisdiction(s) of licensure;

(iii) license expiration date(s);

(iv) licensure classification(s) and status(es);

(v) public emergency and final disciplinary actions, as defined by the contributing state authority; and

(vi) the status of multi-state licensure privileges.

(b) Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by the contributing party state authority.

(c) Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party states' authority.

(2) The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten business days correct inaccurate data to the Information System.

(3) The Board shall report to the Information System within ten business days:

(a) disciplinary action, stipulation or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements relating to participation in alternative programs required to remain nonpublic by the contributing state authority);

(b) dismissal of a complaint; and

(c) changes in status of disciplinary action, or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the Information System within ten business days upon report of disciplinary action, stipulation or order requiring participation in alternative programs or stipulations which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the Information System shall be completed within ten business days upon notification by a Board.

KEY: nurses, licensing
January 1, 2000 **58-31c-103**
58-1-106(1)

R156. Commerce, Occupational and Professional Licensing.
R156-66a. Amateur Boxing Fund Grant Rules.
R156-66a-101. Title.

These rules are known as the "Amateur Boxing Fund Grant Rules".

R156-66a-102. Definitions.

(1) "Amateur boxing", as used in 1999 Utah Laws Chapter 310, Item 40, means a live boxing contest where the contestants participate for a non cash prize of nominal value, as defined in Subsection 58-66-102(10)(b) of the Utah Professional Boxing Regulation Act.

(2) "Applicant" means a nonprofit entity within the state as defined in this section.

(3) "Costs of travel", as used in the 1999 Utah Laws Chapter 310, Item 40, means meals, lodging and transportation associated with participation in an amateur boxing contest.

(4) "Grant", as used in the 1999 Utah Laws Chapter 310, Item 40, means the distribution of fund monies as authorized in 1999 Utah Laws Chapter 310, Item 40 of the Utah Code Annotated.

(5) "Nonprofit entity within the state", as used in 1999 Utah Laws Chapter 310, Item 40, means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

R156-66a-103. Authority - Purpose.

These rules are adopted to enable the Division to implement the provisions of 1999 Utah Laws Chapter 310, Item 40, to facilitate the distribution of General Fund monies to nonprofit entities for the promotion of amateur boxing.

R156-66a-301. Qualifications for Application for Grants for Amateur Boxing.

(1) In accordance with 1999 Utah Laws Chapter 310, Item 40, each applicant for a grant shall:

(a) submit an application in a form prescribed by the division;

(b) provide documentation that the applicant is a nonprofit entity within the state;

(c) document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) provide expense receipts for expenditures disbursed prior to the application but no earlier than January 1999; or

(iv) provide a signed contract defining how the requested monies will be spent and subsequent documentation on how the monies were spent.

R156-66a-302. Priority Schedule.

Grants will be awarded based on the following general criteria:

(1) the applicant's past participation in amateur boxing contests;

(2) the scope of the applicant's current involvement in amateur boxing contests;

(3) the demonstrated need for the funding; and

(4) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY: grants, amateur boxing*
November 16, 1999 1999 Utah Laws 310, Item 40

R156. Commerce, Occupational and Professional Licensing.
R156-73. Chiropractic Physician Practice Act Rules.
R156-73-101. Title.

These rules are known as the "Chiropractic Physician Practice Act Rules".

R156-73-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or these rules:

(1) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(2) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

R156-73-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 73.

R156-73-104. 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.

R156-73-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-73-302(1)(d), graduation from a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., is evidence of having satisfactorily completed at least two years of general study in a college or university.

R156-73-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-73-302(1)(f)(i), the approved written clinical competency examination is the National Chiropractic Board Part 3 or the Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

(2) In accordance with Subsection 58-73-302(1)(f)(iii), the approved practical examination is the National Chiropractic Board Part 4 (practical examination) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

R156-73-303. Temporary License.

In accordance with Subsections 58-1-303(1)(a) and 58-73-302(2), an endorsement applicant may be issued a temporary license under the following conditions:

(1) The licensee shall work under the supervision of a chiropractic physician approved by the division.

(2) The supervising chiropractic physician shall:

(a) be available at all times to provide advice, instruction and consultation;

(b) assume responsibility for all chiropractic activities and services performed by the temporary licensee; and

(c) supervise no more than two persons at any given time.

(3) The temporary license may not be renewed or extended for any purpose.

(4) Any change in supervising chiropractic physician shall be preapproved by the division.

R156-73-303a. Continuing Education - Renewal Requirement.

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete 24 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

R156-73-303b. Continuing Education - Standards.

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional association or organization representing a licensed profession whose program objectives relate to the practice of chiropractic; or

(iii) the licensing agency of another state;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided; and

(g) there shall be no more than four clock hours related to chiropractic practice marketing.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

R156-73-304. Preceptorship - Approved Form of Supervision.

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) the supervising preceptor shall:

(a) be currently licensed in good standing in Utah;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) remain on the premises at all times while the preceptee

is performing any clinical procedures.

R156-73-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 73, is established by rule in Section R156-1-308.

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

R156-73-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity; and

(7) failing to keep the division informed of a current address and telephone number.

R156-73-502. Chiropractic Assistant.

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

(1) The supervising chiropractic physician shall:

(a) be currently licensed in Utah;

(b) be responsible for the chiropractic activities and services performed by the assistant; and

(c) always be available to provide advice, instruction and consultation.

(2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:

(a) adjustment of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

R156-73-602. Advisory Peer Committee Created - Membership - Duties.

In accordance with Subsection 58-73-602(3), there is created the Quality and Standards Committee as an advisory peer committee to the Chiropractic Physician Licensing Board consisting of five chiropractic physicians licensed and in good standing in Utah who are qualified by education, training and experience to competently act in quality care review.

KEY: chiropractors, licensing, chiropractic physician*
November 16, 1999 **58-73-101**
58-1-106(1)
58-1-202(1)

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63-25a-406 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63-25a-411(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased within the United States. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63-25a-402(9).

B. Pursuant to Subsection 63-25a-402(9)(e), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $2500 maximum mental health counseling award.

4. Secondary victims of a crime shall be eligible for a $1000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider after the maximum award has been reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. In these cases the Crime Victim Reparations Board shall consider reimbursement of in-patient treatment or contract with a managed mental health care provider to make recommendations to the Reparations Officer regarding treatment. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Secondary victims shall not be considered for in-patient hospitalization.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Only facilities with 24 hour nursing care can be considered. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days. Day treatment shall not exceed $200 per day and will be considered payment in full to the provider. Secondary victims shall not be considered for residential or day treatment.

9. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

10. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license, registered with the State of Utah Department of Commerce, Division of Professional and Occupational Licensing and supervised by a licensed therapist.

11. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

12. The following maximum amounts shall be payable for mental health counseling:

(a) up to $125 per hour for individual and family therapy performed by licensed psychiatrists, and up to $62.50 per hour for group therapy;

(b) up to $85 per hour for individual and family therapy performed by licensed psychologists and up to $42.50 per hour for group therapy;

(c) up to $65 per hour for individual and family therapy performed by an L.C.S.W., M.S.W. or marriage and family therapist, and up to $32.50 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

13. Chemical dependency specific treatment will not be

compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63-25a-424(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63-25a-403, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-325 shall be eligible for a reparation award as long as all the requirements of Section 63-25a-411 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63-25a-422, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63-25a-411(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. Reference should be made to Section R270-1-12 for guidelines on sick leave, annual leave or bereavement leave as a collateral source. The Crime Victim Reparations Board may review extenuating circumstances on loss of earnings claims.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $500 are allowed for court, medical or mental health visits for primary and secondary victims. Board approval is needed where extenuating circumstances exist.

R270-1-11. Witnesses.

Pursuant to Subsection 63-25a-402(37)(a), witnesses to a violent crime who are traumatically affected and require psychological or medical attention can be reviewed on a case-by-case basis to determine if they qualify as a victim.

R270-1-12. Collateral Source.

A. Pursuant to Section 63-25a-413, sick leave and annual leave shall be considered as a collateral source. If there are extenuating circumstances, the director may make an exception to this requirement.

B. Only insurance policies that itemize specific coverages under the policy, such as funeral and burial expenses, shall be considered as a collateral source.

C. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

D. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-13. Record Retention.

A. Pursuant to Section 63-25a-401, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for two years and then transferred to State Archives. Case files will be retained in the State Records Center for ten years and then destroyed.

R270-1-14. Awards.

A. Pursuant to Section 63-25a-421, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-15. Essential Personal Property.

Pursuant to Subsection 63-25a-411(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim. The Reparation Officer may allow up to $1500 for replacement of such items as eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board shall review any exceptions over $1500.

R270-1-16. Subrogation.

Pursuant to Section 63-25a-419, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

R270-1-17. Unjust Enrichment.

A. Pursuant to Subsection 63-25a-410(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-18. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the -counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

R270-1-19. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations Board by written internal policy and procedure.

R270-1-20. Medical Awards.

A. Pursuant to Subsection 63-25a-411(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4. After the effective date of this rule, in-patient hospital medical bills shall be reimbursed at a rate established between the CVR office and individual hospitals and shall be considered payment in full. A Memorandum of Agreement shall be signed and kept on file.

R270-1-21. Misconduct.

Pursuant to Subsections 63-25a-402(21) and 63-25a-412(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or engaged in conduct in which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

R270-1-22. Three Year Limitation.

Pursuant to Subsections 63-25a-406(1)(c) and 63-25a-428(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Board may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule.

R270-1-23. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63-25a-402(19) and 63-25a-411(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement

officer or victim/witness coordinator.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within 90 days of the examination.

8. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Sexual assault victims have a right to an informal hearing pursuant to Section R270-2-2 if they disagree with the agency's decision concerning payment or the amount of payment.

13. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical;

iii. collection of specimens and wet mount for sperm; and

iv. treatment for the prevention of sexually transmitted disease up to four weeks.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy; and

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy.

14. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-24. Loss of Support Awards.

A. Pursuant to Subsection 63-25a-411(4)(g), loss of support awards shall be covered on death claims only.

R270-1-25. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded a one time only rental award for actual rent expenses of $1800 for a maximum of three months if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

R270-1-26. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63-25a-402(37)(39) and who witness or are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVR Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) and anyone residing in the household at the time of the crime who was traumatically affected by the crime. The CVR Board may review requests by other individuals who are not immediate family members or do not reside in the household if their involvement is essential to the well being and treatment of the primary victim.

KEY: victim compensation, victims of crimes
December 16, 1999 63-25a-401 et seq.
Notice of Continuation December 23, 1996

R277. Education, Administration.
R277-444. Distribution of Funds to Arts and Sciences Organizations.
R277-444-1. Definitions.

A. "Arts organization" means a non-profit organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

B. "Science organization" means a non-profit organization that provides science-related services, performances or instruction to the Utah community.

C. "Non-profit organization" means an organization no part of the income of which is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

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

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

F. "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

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

R277-444-2. Authority and Purpose.

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

B. The purpose of this rule is to provide criteria for the distribution of funds appropriated by the Utah Legislature to enhance the Core Curriculum through school visits by professional arts and science groups in the community.

R277-444-3. Eligibility of Organizations.

A. Only non-profit organizations are eligible. Individuals are not eligible. Evidence of non-profit status shall be provided if requested by USOE staff.

B. Only organizations that have existed for at least three years with proven or demonstrated excellence in their discipline are eligible for funding. Evidence of excellence may be based upon:

(1) a peer review;

(2) proven fiscal responsibility; or

(3) receipt of national grant awards (e.g. National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation)

C. Organizations shall receive funding only if they have the demonstrated ability to share their discipline(s) creatively and effectively in educational settings.

D. First consideration shall be given to Utah-based organizations.

E. For fiscal year 1999-2000, $50,000 of the funding provided under the 1999 Annual Appropriations Act, Item 258, shall be awarded to arts coordinating booking organizations selected by the request-for-proposal process.

F. Beginning in fiscal year 2000-2001, all scientists, artists, or entities hired/sponsored for services in the schools, directly or indirectly through coordinating organizations, shall be subject to the same review and approval process.

R277-444-4. Applications and Funding.

A. Applications shall be provided by the USOE.

B. Organizations shall submit applications to the USOE Fine Arts and Science Specialists who shall make final funding recommendations to the USOE Finance Committee by September 30 of the school year in which the money is available.

C. Organizations may submit plans based on a one, two or three year cycle as determined between the applicant and the USOE.

D. Organizations may reapply for funding when the terms of their applications have concluded.

E. For fiscal year 1999-2000, arts/sciences organizations selected for funding may charge an appropriate fee for services to recipient schools or organizations.

R277-444-5. Accountability.

A. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

B. Organizations that receive arts/science funding shall submit an annual evaluation report by September 1 of the fiscal year in which the award was made.

C. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE;

(2) a narrative description of all services provided by the organization;

(3) copies of any and all materials developed, as requested;

(4) record of the dates and places of all services rendered, the number of instruction/performance hours per district, number of artist hours provided, and the number of students and teachers served; and

(5) examples of individual and overall program impact on school science or art programs or curricula.

(6) a report and accounting of fees charged, if any, to recipient schools, districts, or organizations.

D. The USOE may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

R277-444-6. Variations or Waivers.

A. No deviations from the approved and funded proposal shall be permitted without prior approval from the appropriate USOE specialist or his designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula
November 2, 1999 **Art X Sec 3**
53A-1-401(3)

R277. Education, Administration.
R277-451. The State School Building Program.
R277-451-1. Definitions.

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

B. "ADM" means Average Daily Membership of students.

C. "Capital Outlay Foundation Program" means a program that provides a minimum dollar generation guarantee, per ADM, for every district willing to levy a tax of. 0024 per dollar of taxable value on real property.

D. "Emergency school building needs distribution " means a program that utilizes twenty percent of the money made available through the Public Education Capital Outlay Act pursuant to Sections 53A-21-101 through 53A-21-105.

E. "Students in alternative housing" means additional students other than those who can be appropriately accommodated in existing buildings and programs, who have been accommodated through year-round scheduling, extended day scheduling, double session scheduling, portable buildings, contracting out for additional space or busing to other districts.

F. "Assessed valuation" means the assessed value of real property certified by the State Tax Commission to the Board each year.

G. "Derived assessed valuation" means current collections of tax levy (no prior year penalties or redemptions) divided by the same year tax rates.

H. "Need" means growth and the number of students in alternative housing.

I. "Growth" means:

(1) a district's percent increase of students annually from October 1 to October 1, in the past three years as compared to the total student increase of the state; and

(2) a district's percent increase of students compared to its own number of students.

J. "Effort" means:

(1) the prior three year average of total district tax levy, and

(2) the total funds used by a district to meet bond and interest payments as a percentage of the money raised during the prior three years from the .0024 tax rate levied for capital outlay and debt service.

K. "Foundation level" means the guaranteed pro-rated amount per ADM to the extent of funds available distributed to school districts by the Board.

L. "Ability" means a school district's prior three year average derived assessed valuation per ADM.

M. "Loan" means a transaction which takes money from a Board account and places it in a school district account with the full legal intention by a school district that it be repaid to the account from which it was taken.

N. "Accounts receivable" means any amount due the Board from a school district for which payment has not been received by the Board.

O. "Fiscal year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

P. "Superintendent" means the State Superintendent of Public Instruction.

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

R277-451-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-19-101 through 105 which direct local school boards to develop budgets, provide for appropriate plans to be filed with the Superintendent and maintain reserves consistent with the law; Sections 53A-21-102 and 53A-21-104 which direct the Board to provide financial assistance to school districts to meet critical school building and debt service needs and provide standards toward that end, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the eligibility requirements and the procedures for distributing funds appropriated for the capital outlay foundation program, the emergency school building needs program and for providing short-term loans to districts for capital outlay projects in school building construction and renovation.

R277-451-3. Capital Outlay Foundation Program.

A. A district may receive state school building funds under the capital outlay foundation program established in Section 53A-21-102(1) if the amount raised by levying a tax rate of .0024 does not generate revenues above the foundation level established per ADM when the legislative appropriation is entered into the formula.

B. To qualify for capital outlay foundation funds, a school district shall levy a property tax rate up to 0.002400 designated specifically for capital outlay and debt service:

(1) school districts levying less than the full 0.002400 tax rate for capital outlay and debt service shall receive proportional funding under the capital foundation program based upon the percentage of the 0.002400 tax rate levied by the district;

(2) the amount of capital foundation funds to which a school district would otherwise be entitled under the Capital Outlay Foundation program may not be reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation for a period of two tax years from the effective date of any such change in the certified tax rate.

C. The USOE shall support the foundation program to assist the qualifying district in reaching the foundation level.

D. Eighty percent of the funds appropriated by the Legislature under Section 53A-21-105 shall be used in calculating the foundation level through fiscal year 2001.

E. In fiscal year 2002, 100 percent of the funds appropriated by the Legislature under Section 53A-21-105 shall be the foundation level.

R277-451-4. Emergency School Building Needs Program.

A. A district may receive state school building funds under the emergency school building needs program under Section 53A-21-103(4)(a) by meeting the qualifying criteria of need, effort and ability.

B. Calculation to determine a district's eligibility and the distribution amount for the emergency building needs program shall be made based on a statistical formula provided by the USOE Director of Finance or his designee.

C. Through fiscal year 2001, twenty percent of the funds appropriated by the Legislature in Section 53A-21-105 shall be

the emergency school building needs program funds.

D. On June 30, 2001, this program shall cease to exist and all funds appropriated by the Legislature in Section 53A-21-105 shall be used in the capital outlay foundation program.

R277-451-5. Capital Outlay Loan Program.

A. A district may receive capital outlay loan program funds under Section 53A-21-102 which establishes a capital outlay loan program to provide short-term help to districts, for a period not to exceed five years, for school building construction and renovation.

B. To be a priority qualifier for the capital outlay loan program, a district shall meet all of the following requirements:

(1) demonstrate an ability and commitment as demonstrated by a local board vote to set the levy at the rate needed to repay the loan within the time period prescribed by the loan agreement; and

(2) levy a tax rate for capital outlay and debt service above the state average; and

(3) demonstrate a district need that is better met through the loan fund than through more traditional means for providing school building construction or renovation or both.

C. If a district does not meet the criteria for a priority qualifier and the needs of the priority qualifiers are met, the loan application of districts not meeting this criterion may be considered, if the district commits to levying at or above the state average for the next tax year. In the case of a natural disaster or other emergency, this requirement may be waived by the Superintendent.

D. A district applying for a short term loan under this rule shall make a formal application which includes:

(1) the emergency condition or the condition that exists that would be better met through the loan fund rather than through more traditional means for providing school building construction or renovation or both;

(2) the amount of loan sought;

(3) the proposed repayment schedule, not to exceed five years;

(4) the history of the last five years of loans or special supplementary funds received by the district from the USOE;

(5) minutes of the local board meeting recording the affirmative vote to levy the needed tax; and

(6) a signed agreement that if the district should default on a loan payment, the Superintendent may deduct the loan payment and added interest from the calculated per district state distribution after 90 days.

E. The loan request and repayment conditions shall be approved by the Superintendent or his designee.

KEY: educational facilities, education finance
September 15, 1999 **Art X Sec 3**
53A-19-101 through 105
53A-21-102
53A-21-104
53A-1-401(3)
59-2-924

R277. Education, Administration.
R277-471. Oversight of School Inspections.
R277-471-1. Definitions.

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

B. "School District Building Official" (SDBO) means the officer or authority designated by the school district who has direct administrative and operational control of school district construction and renovation and directs compliance with the state adopted building code in the school district.

C. "Superintendent" means the State Superintendent of Public Instruction.

D. "State adopted building code (Code)" means the statutes and administrative rules which control the construction and renovation of buildings in Utah.

E. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district must follow when constructing a new building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction and is available in all school district offices and in the School Finance and Statistics Section of the USOE.

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

R277-471-2. Authority and Purpose.

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

B. The purpose of this rule is to provide specific provisions for the oversight of school construction/renovation inspections.

R277-471-3. School District Building Official.

A. Section 58-56-4 provides for adoption of a building code authority which provides for a code enforcement agency. School districts are designated as code enforcement agencies for school construction within the district's jurisdiction.

B. As a code enforcement agency, school districts shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction and renovation of school facilities in the school district.

C. The SDBO shall monitor school district building construction to require compliance with the provisions of the Code.

D. The SDBO shall render interpretations of the Code for the school district. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.

E. The SDBO may adopt and enforce supplemental district policies under appropriate district policies to clarify the application of the provisions of the Code for district personnel.

F. The SDBO shall send monthly construction inspection summary reports to the USOE and to appropriate local governmental entity building officials on each project that has a USOE project number and exceeds $99,999 in cost. The school district shall retain copies of all individual inspection reports at an identified location in the district for monitoring, auditing and potential review purposes by the USOE.

G. The SDBO shall send final inspection certification to the USOE and to the appropriate local governmental entity upon completion of each project. The district, through the SDBO, shall identify the monthly total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections. The SDBO shall sign a final inspection certification form, certifying that all inspections were completed in accordance with the Code.

R277-471-4. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute to each school district a Resource Manual.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board, local school boards, and school district personnel shall act consistent with the Resource Manual.

R277-471-5. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district and interested persons involved in the school building construction industry. The conference shall:

(1) provide current information on the design, construction, and inspection process of school buildings;

(2) provide training on school construction and inspection matters as determined by the USOE; and

(3) offer and discuss information to improve the existing school building inspection program.

KEY: educational facilities
November 2, 1999 **Art X Sec 3**
53A-1-401(3)
53A-20-104
53A-20-104.5
10-9-106
17-27-105

R280. Education, Applied Technology Education (Board for), Rehabilitation.
R280-203. Certification Requirements for Interpreters for the Hearing Impaired.
R280-203-1. Definitions.

A. "Advisory board" means the Interpreters Certification Board created to assist the Board created by and with the responsibilities of 53A-26a-201 and 202.

B. "Certification of deaf interpreters" means the written approval of the Board required of individuals seeking payment for facilitating effective communication between hearing and hearing impaired persons.

C. "Signed English, cued speech, American Sign Language (ASL), and oral interpreting" are types of alternative communications for the purposes of this Rule.

D. "Board" means the Utah State Board for Applied Technology Education.

E. "USOR" means the Utah State Office of Rehabilitation.

R280-203-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to satisfy the directives of 53A-26a-202(2) including:

(1) certification qualifications provided in the UTAH STATE BOARD OF EDUCATION INTERPRETER FOR THE DEAF CERTIFICATION POLICY AND PROCEDURE MANUAL ("INTERPRETERS MANUAL"), June 1997;

(2) procedures governing applications for certification;

(3) provisions for a fair and impartial method of examination of applicants;

(4) procedures for determining unprofessional conduct; and

(5) conditions and procedures for reinstatement and renewal of certification.

R280-203-3. Certification Qualifications.

A. Candidates for certification shall be at least 18 years old.

B. Candidates shall pass written and performance evaluations provided by the Division of Services to the Deaf.

C. Candidates shall meet the criteria of 53A-26a-302.

R280-203-4. Examination of Applicants for Certification.

Individuals applying for interpreter certification shall be tested and rated by the Division of Services for the Deaf and Hard of Hearing Interpreters Certification Panel according to procedures established in the INTERPRETERS MANUAL.

R280-203-5. Unprofessional Conduct.

A. The definition of "unprofessional conduct" provided in 53A-26a-502 shall be supplemented with the definition applied to educators in R277-514-3 and provided in the INTERPRETERS MANUAL.

B. A complaint alleging unprofessional conduct by a certified interpreter may be filed under the procedure of R277-514. The procedure is provided in the INTERPRETERS MANUAL.

C. The complaint shall be reviewed by the Commission as provided for in R277-514-4.

D. A member of the advisory board shall assist the Board in reviewing the recommendation of the Commission, as provided in 53A-26a-202(3).

R280-203-6. Renewal and Reinstatement.

A. An individual holding an interpreter's certificate is eligible to have that certificate renewed as provided in the INTERPRETERS MANUAL.

B. An individual whose interpreter's certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board. The Board may require the applicant for reinstatement to complete the procedure for certification or may, upon consultation with the advisory board, designate the areas of the application process in which the applicant shall be reviewed.

KEY: certification, interpreters*
June 5, 1997 **53A-24-103**
Notice of Continuation December 15, 1999 **53A-1-401(3)**
53A-26a-201 and 202

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on January 7, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part G, Fluoride, as most

recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on September 30, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII, Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Reserved.

Reserved.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on October 7, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on

February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program*, particulate matter*, ozone
November 20, 1998 19-2-104(3)(e)
Notice of Continuation June 2, 1997

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, 1997 ed., is adopted and incorporated by reference and shall be effective through June 30, 1999. 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)(16) for mineral processing secondary materials), and shall be effective July 1, 1999.

(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)(16), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed, except as provided under R315-2-4(a)(16), which shall be effective on July 1, 1999.

(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 must 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) It is a mixture of solid waste and a hazardous waste that is listed in sections R315-2-10 or R315-2-11 solely because it exhibits one or more of the characteristics of hazardous waste identified in section R315-2-9, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 or unless the solid waste is excluded from regulation under R315-2-4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 for which the hazardous waste listed in R315-2-10 or R315-2-11 was listed. However, nonwastewater mixtures are still subject to the requirements of R315-13, which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in sections R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under sections R315-2-16 and R315-2-17; however, the following mixtures of solid wastes and hazardous wastes listed in sections R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and:

(A) One or more of the following spent solvents - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million;

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million;

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous

Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided it is demonstrated that the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (iv). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns,

flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent	Maximum for any single composite sample - TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste 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.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when

disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10 and 11, which incorporates by reference 40 CFR 261 Subpart D, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing, provided that:

(i) The secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The secondary material is not accumulated speculatively;

(iii) Except as provided in (iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Executive Secretary, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(17) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing

facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from ortanic 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).

(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 remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of subsection R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation

under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge, There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, and R315-4 through R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-10, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of

the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-1.3(f) (40 CFR 261.4(f)) or has an appropriate RCRA plan approval or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received"

hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

R315-2-5. 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., are adopted and incorporated by reference with the following exception:

(a) Paragraph 40 CFR 261.6(a)(5) shall be 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 110 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 110 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 19-6-2 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 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, as incorporated by reference at R315-29(g)(2), 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, 1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference, excluding the following wastes:

(1) K064 -- Acid Plant blowdown slurry or sludge resulting from the thickening of blowdown slurry from primary copper production. (T)

(2) K065 -- Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. (T)

(3) K066 -- Sludge from treatment of process wastewater or acid plant blowdown or both from primary zinc production. (T)

(4) K090 -- Emission control dust or sludge from ferrochromium silicon production. (T)

(5) K091 -- Emission control dust or sludge from ferrochromium production. (T)

(6) K160 -- Solids from the production of thiocarbamates and solids from the treatment of wastes from thiocarbamates.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e),

1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 1998 ed., is adopted and incorporated by reference.

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 Federal law.

(b) The Board may consider a variance request in accordance with the statutory standard of 19-6-111. No variance shall be granted except upon application for it. Immediately upon receipt of an application for a variance, the Board shall give public notice of the application and provide for an opportunity for a public hearing. A variance granted for more than one year shall contain a timetable for coming into compliance with these regulations and shall be conditioned on adherence to that timetable.

(c) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance. No renewal shall be granted except on application for it. Immediately upon receipt of an application for renewal, the Board shall give public notice of the application and provide for an opportunity for a public hearing.

(d) The Board may, at its own instance, review any variance granted during the term for which a variance was granted. The procedure for this review shall be the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(e) Any variance or renewal shall exist at the discretion of the Board and shall not constitute a right of the applicant or holder. However, any person adversely affected by the granting, denial or revocation of any variance or renewal by the Board may obtain judicial review of the Board's decision by filing a petition in District Court within 30 days from the date of notification of the decision.

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, 63-46b, 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 63-46a-12.

(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 Title 63, Chapter 46a, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, Title 63, Chapter 46b, and Rule 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 63-46a-12 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 operation plan approval in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a hazardous waste operation plan approval 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 operation plan, in a public hearing held on the draft plan approval, or in comments filed on the draft hazardous waste operation plan approval, or on the notice of intent to deny the hazardous waste operation plan. The fact sheet accompanying the hazardous waste operation plan approval 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 R315-3-17 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 R315-16-1.6.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 1998 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous waste
December 15, 1999 **19-6-105**

Notice of Continuation March 12, 1997 **19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-3. Application and Plan Approval Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-3-1. Plan Approval Required.

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Executive Secretary for, a hazardous waste operation plan for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste plan pursuant to this section and Section 19-6-108 for that facility, may continue to operate that facility without violating this section until the time as the plan is approved or disapproved pursuant to this section.

(b) The Executive Secretary shall review each proposed hazardous wastes operation plan to determine whether that plan will be in accord with the provisions of these rules and Section 19-6-108 and, on that basis, shall approve or disapprove that plan within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under this section and Section 19-6-108 and within the applicable time period of Section 19-6-108, the Executive Secretary determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of this section or the applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Executive Secretary as required by these rules.

(c) Any plan which does not meet the requirements of these rules shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the Executive Secretary fails to approve or disapprove that plan or to request the submission of any additional information or modification to that plan, the plan shall not be deemed approved but the applicant may petition the Executive Secretary for a decision or seek judicial relief requiring a decision of approval or disapproval.

R315-3-2. Submission of Part A and Part B.

An application for approval of a hazardous waste operation plan consists of two parts, Part A and Part B. For an existing facility, the requirement is satisfied by submitting only Part A of the application until the date the Executive Secretary sets for each individual facility for submitting Part B of the application, which date shall be in no case less than 6 months after the Executive Secretary gives notice to a particular facility that it must submit Part B of the application.

R315-3-3. Application Submittal Required.

(a)(1) Plan Approval Application. Any person who is required to have a plan approval, including new applicants and persons with expiring plan approvals, shall complete, sign and submit, a minimum of two applications to the Executive Secretary as described in this section. Persons currently authorized with interim status shall apply for permits when required by the Executive Secretary. Persons covered by RCRA permits by rule, R315-3-18, need not apply. Procedures for applications, issuance and administration of emergency plan approvals are found exclusively in R315-3-19. Procedures for application, issuance and administration of research, development, and demonstration plan approvals are found exclusively in R315-3-22.

(2) Owners and operators of hazardous waste management units must have plan approvals during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to R315-7-14, which incorporates by reference 40 CFR 265.115, after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under R315-3-3(q) and (r), or obtain an enforceable document in lieu of a post-closure permit, as provided under R315-3-3(s). If a post-closure permit is required, the permit must address applicable R315-8 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of R315. The denial of a plan approval for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under R315-3-3.

(b)(1) Existing Hazardous Waste Management Facilities. Owners and operators of existing hazardous waste management facilities shall submit Part A of their plan approval application to the EPA Regional Administrator or Executive Secretary no later than:

(i) Six months after the date of publication of rules which first require them to comply with the standards set forth in R315-7 or R315-14, or

(ii) Thirty days after the date they first become subject to the standards set forth in R315-7 or R315-14, whichever first occurs.

For facilities which had to comply with R315-7 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations, 45 FR 33006 et seq., the deadline for submitting an application was November 19, 1980. Where other existing facilities shall begin complying with R315-7 or R315-14 at a later date because of revisions to R315-1, R315-2, R315-7, or R315-14, the Executive Secretary will specify when those facilities shall submit a plan approval application.

(2)(i) The Executive Secretary may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities shall submit Part A of their plan approval application if he finds that there has been substantial confusion as to whether the owners and operators of such facilities were required to file a plan approval application and such confusion is attributed to ambiguities in R315-1, R315-2, R315-7 or R315-14 of the regulations.

(ii) The Executive Secretary may by compliance order issued under 19-6-112 and 19-6-113 extend the date by which the owner and operator of an existing hazardous waste management facility must submit part A of their plan approval application.

(3) The owner or operator of an existing hazardous waste management facility may be required to submit Part B of the plan approval application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a Part B application in accordance with the dates specified in R315-3-32. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under R315 that render the facility subject to the requirement to have a plan approval, shall submit a part B application in accordance with the dates specified in R315-3-32.

(4) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under section R315-3-16.

(c) New Hazardous Waste Management Facilities.

(1) Except as provided in R315-3-3(c)(3), no person shall begin physical construction of a new hazardous waste management facility without having submitted Part A and Part B of the application and having received a finally effective plan approval.

(2) An application for a plan approval for a new hazardous waste management facility, including both Part A and Part B, may be filed any time after promulgation of applicable regulations. The application shall be filed with the Regional Administrator if at the time of application the State has not received final authorization for permitting such facility; otherwise it shall be filed with the Executive Secretary. Except as provided in paragraph (c)(3) of this section, all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding R315-3-3(c)(1), a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the U.S. EPA Administrator under section (6)(e) of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., and any person owning or operating such a facility may, at any time after construction or operation of the facility has begun, file an application for a plan approval to incinerate hazardous waste authorizing the facility to incinerate waste identified or listed in these rules.

(d)(1) Updating plan approval applications.

If any owner or operator of a hazardous waste management facility has filed Part A of a plan approval application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Regional Administrator if the State has not received final authorization, withing six months after the promulgation of revised regulations under 40 CFR 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Executive Secretary if the State has obtained final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in the State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with changes during interim status, R315-3-31. Revised Part A applications necessary to comply with the provisions of interim status shall be filed with the Executive Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of R315-3-3(d)(1) does not receive interim status as to the wastes not covered by duly filed Part A applications.

(e) Reapplications. Any hazardous waste management facility with an effective plan approval shall submit a new application at least 180 days before the expiration date of the effective plan approval, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing plan approval.

(f) Recordkeeping. See R315-3-7(c).

(g) The Executive Secretary may require a permittee or an applicant to submit information in order to establish plan approval conditions under R315-3-23(b)(2), and R315-3-11(i).

(h) Who Applies?

When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a plan approval, except that the owner shall also sign the plan approval application.

(i) Completeness.

(1) The Executive Secretary shall not issue a plan approval before receiving a complete application for a plan approval except for plan approval by rule, or emergency plan approval. An application for a plan approval is complete when the Executive Secretary receives an application form and any supplemental information which are completed to his satisfaction. An application for a plan approval is complete notwithstanding the failure of the owner or operator to submit the exposure information described in R315-3-7(d). The Executive Secretary may deny a plan approval for the active life of a hazardous waste management facility or unit before receiving a complete application for a plan approval.

(2) The Executive Secretary shall review for completeness every application for a plan approval. Each application for a plan approval submitted by a new hazardous waste management facility, should be reviewed for completeness by the Executive Secretary in accordance with the applicable review periods of 19-6-108. Each application for a plan approval submitted by an existing hazardous waste management facility, both Part A and B of the application, should be reviewed for completeness in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Executive Secretary shall

notify the applicant that the application is complete upon receiving this information. After the application is complete, the Executive Secretary may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

(3) If an applicant fails or refuses to correct deficiencies in the application, the plan approval may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.

(j) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a reasonable date shall be scheduled.

(k) The effective date of an application is the date on which the Executive Secretary notifies the applicant that the application is complete as provided in R315-3-3(i)(2).

(l) For each application from a major new hazardous waste management facility, the Executive secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Executive Secretary intends to:

(1) Prepare a draft plan approval;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing; and

(4) Issue a final plan approval.

(m) Specific inclusions. Owners or operators of certain facilities require hazardous waste operation plan approvals as well as permits under other environmental programs for certain aspects of facility operation. Hazardous waste operation plan approvals are required for:

(1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with a State or Federal UIC permit will be deemed to have a "permit by rule" if they comply with requirements of R315-3-18.

(2) Treatment, storage, and disposal of hazardous waste at facilities requiring and NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a "permit by rule" if they comply with provisions of R315-3-18.

(n) Specific exclusions. The following persons are among those who are not required to obtain a plan approval:

(1) Generators who accumulate hazardous waste on-site for less than the time periods as provided in R315-5-10, which incorporates the requirements of 40 CFR 262.34.

(2) Farmers who dispose of hazardous waste pesticides from their own use as provided in R315-5-11.

(3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under R315-2-5, small quantity generator exemption.

(4) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(5) Owners of operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-9 at a transfer facility for a period of ten days or less.

(7) Persons adding absorbent material to waste in a container, as defined in 40 CFR 260.10, which is incorporated by reference in R315-1, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with.

(8) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7) managing the wastes listed below. These handlers are subject to regulation under R315-16.

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.6.

(o) Further exclusions.

(1) A person is not required to obtain a plan approval for treatment or containment activities taken during immediate response to any of the following situations;

(i) Discharge of a hazardous waste;

(ii) An imminent and substantial threat of a discharge of hazardous waste.

(iii) A discharge of a material which, when discharged, becomes a hazardous waste.

(2) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(p) Plan approvals for less than an entire facility. The Executive Secretary may issue or deny a plan approval for one or more units at a facility without simultaneously issuing or denying a plan approval to all units at the facility. The interim status of any unit for which a plan approval has not been issued or denied is not affected by the issuance or denial of a plan approval to any other unit at the facility.

(q) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under R315-7 standards shall obtain a post-closure plan approval unless they can demonstrate to the Executive Secretary that the closure met the standards for closure by removal or decontamination in R315-8-11.5, R315-8-13.8, or R315-8-12.6, respectively. The demonstration may be made in the following ways:

(1) if the owner or operator has submitted a Part B application for a post-closure plan approval, the owner or operator may request a determination, based on information contained in the application, that R315-8 closure by removal standards were met. If the Executive Secretary believes that R315-8 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in R315-3-3(r);

(2) if the owner or operator has not submitted a Part B plan approval application for a post-closure plan approval, the owner or operator may petition the Executive Secretary for a determination that a post-closure plan approval is not required because the closure met the applicable R315-8 closure standards;

(A) the petition must include data demonstrating that closure by the removal or decontamination standards of R315-8 were met.

(B) the Executive Secretary shall approve or deny the petition according to the procedures outlined in R315-3-3(r).

(r)(1) Procedures for Closure Equivalency Determination. If a facility owner or operator seeks an equivalency demonstration under R315-3-3(q), the Executive Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The Executive Secretary will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the equivalence of the R315-7 closure to an R315-8 closure. The Executive Secretary will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(2) the Executive Secretary will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Executive Secretary finds that the closure did not meet the applicable R315-8 standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet R315-8 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving a written statement. The Executive Secretary will review any additional information submitted and make a final determination within 60 days.

(3) if the Executive Secretary determines that the facility did not close in accordance with R315-8-7, which incorporates by reference 40 CFR 264.110 - 116, closure by removal standards, the facility is subject to post-closure plan approval requirements.

(s) Enforceable documents for post-closure care. At the discretion of the Executive Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of R315-7-14, which incorporates by reference 40 CFR 265.121. "Enforceable document" means an order, a plan, or other document issued by the Executive Secretary that meets the requirements of R315-9 and R315-101, including a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

R315-3-4. Information Requirements for Part A.

All applicants shall provide the following information to the Executive Secretary:

(a) The activities conducted by the applicant which require it to obtain a hazardous waste operation plan approval.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under the Utah Solid and Hazardous Waste Act or RCRA.

(2) Underground Injection Control (UIC) program under Safe Drinking Water Act (SDWA), 42 U.S.C. 300f et seq.

(3) NPDES program under Clean Water Act (CWA), 33 U.S.C. 1251 et seq.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act, 42 U.S.C. 7401 et seq.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Dredge or fill permits under section 404 of the Clean Water Act.

(8) Other relevant environmental permits, including State and Federal permits or plan approvals.

(g) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.

(h) A brief description of the nature of the business.

(i) The legal description of the facility with reference to the land survey of the State of Utah.

(j) The name, address, and telephone number of the owner of the facility.

(k) An indication of whether the facility is new or existing and whether it is a first or revised application.

(l) For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.

(m) For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(n) A description of the processes to be used for treating, storing, or disposing of hazardous waste, and the design capacity of these items.

(o) A specification of the hazardous wastes or hazardous waste mixtures listed or designated under R315-2 to be treated, stored, or disposed at the facility, an estimate of the quantity of these wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for these wastes.

(p) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

R315-3-5. General Information Requirements for Part B.

(a) Part B information requirements presented below reflect the standards promulgated in R315-8. These information requirements are necessary in order for the Executive Secretary to determine compliance with the standards of R315-8. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in Part B cannot

be provided to the extent required, the Executive Secretary may make allowance for submission of the information on a case-by-case basis. Information required in Part B shall be submitted to the Executive Secretary and signed in accordance with requirements in R315-3-8. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in R315-3-6.14 is required in Part B of the plan approval application.

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as R315-8-1 provides otherwise:

(1) A general description of the facility,

(2) Chemical and physical analyses of the hazardous wastes and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with R315-8.

(3) A copy of the waste analysis plan required by R315-8-2.4(b) and, if applicable R315-8-2.4(c).

(4) A description of the security procedures and equipment required by R315-8-2.5, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by R315-8-2.6(b). Include, where applicable, as part of the inspection schedule, specific requirements in R315-8-9.5, R315-8-10, which incorporates by reference the specific provisions of 40 CFR 264.193(i) and 264.195, R315-8-11.3, R315-8-12.3, R315-8-13.4, R315-8-14.3, and R315-8-16, which incorporates by reference 40 CFR 264.602, R315-8-17, which incorporates by reference 40 CFR 264.1033, R315-8-18, which incorporates by reference 40 CFR 264.1052, 264.1053, and 264.1058, and R315-8-22, which incorporates by reference 40 CFR 264.1084, 264.1085, 264.1086, and 264.1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of R315-8-3.

(7) A copy of the contingency plan required by R315-8-4. Include, where applicable, as part of the contingency plan, specific requirements in R315-8-11.8, R315-8-10.11, and R315-8-12.6.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations, for example, ramps, special forklifts;

(ii) Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, trenches;

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste, for example, protective clothing; and

(vi) Prevent releases to the atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with R315-8-2.8 including documentation demonstrating compliance with R315-8-2.8.

(10) Traffic pattern, estimated volume, number, types of vehicles and control, for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals.

(11) Facility location information:

(i) In order to determine the applicability of the seismic standard R315-8-2.9(a), the owner or operator of a new facility must identify the political jurisdiction, e.g., county, township, or election district, in which the facility is proposed to be located. If the county or election district is not listed in R315-50-11, no further information is required to demonstrate compliance with R315-8-2.9(a).

(ii) If the facility is proposed to be located in an area listed in R315-50-11, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of a quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault, which have displacement in Holocene time, within 3,000 feet of a facility are present, based on data from:

(I) Published geologic studies,

(II) Aerial reconnaissance of the area within a five mile radius from the facility,

(III) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(IV) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults, to include lineations, which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of the portions of the facility, data shall be obtained from a subsurface exploration, trenching, of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. The trenching shall be performed in a direction that is perpendicular to known faults, which have had displacement in Holocene time, passing within 3,000 feet of the portions of the facility where treatment, storage, and disposal of hazardous waste will be conducted. The investigation shall document with supporting maps and other analyses, the location of any faults found. The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification shall indicate the source of data for the determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year

flood level and any other special flooding factors, e.g., wave action, which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area, usually areas of the floodplain less than 200 feet in width, these areas shall be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(iv) Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units, e.g., tanks, incinerators, and flood protection devices, e.g., floodwalls, dikes, at the facility and how these will prevent washout.

(C) If applicable, and in lieu of R315-3-5(a)(11)(iv)(A) and (B), a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(I) Timing of the movement relative to flood levels, including estimated time to move the waste, to show that the movement can be completed before floodwaters reach the facility.

(II) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the rules under R315-3, R315-7, and R315-8.

(III) The planned procedures, equipment, and personnel to be used and the means to ensure that the resources will be available in time for use.

(IV) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with R315-8-2.9(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with R315-8-2.7. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in R315-8-2.7(d)(3).

(13) A copy of the closure plan and where applicable, the post-closure plan required by R315-8-7 which incorporates by reference 40 CFR 264.112, and 264.118, and R315-8-10 which incorporates by reference 40 CFR 264.197. Include where applicable as part of the plans specific requirements in R315-8-9.9, R315-8-10, R315-8-11.9, R315-8-12.9, R315-8-13.11, R315-8-14.11, R315-8-15.12, and R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under R315-8-7 which incorporates by reference 40 CFR 264.119, have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with R315-8-8 which incorporates by reference 40 CFR 264.142, and a copy of the documentation required to demonstrate financial assurance under R315-8-8 which incorporates by reference 40 CFR 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with R315-8-8, which incorporates by reference 40 CFR 264.144, plus a copy of the financial assurance mechanism adopted in compliance with R315-8-8.3 documentation required to demonstrate financial assurance under R315-8-8, which incorporates by reference 40 CFR 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of R315-8-8, which incorporates by reference 40 CFR 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 264.147(a), which is incorporated by reference in R315-8-8, and if applicable 40 CFR 264.147(b), also incorporated by reference in R315-8-8, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in 40 CFR 264.147(c), incorporated by reference in R315-8-8.

(18) Where appropriate, proof of coverage by a financial mechanism as required in R315-8-8.

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters, one inch, equal to not more than 61.0 meters, 200 feet. For large hazardous waste management facilities, the Executive Secretary will allow the use of other scales on a case-by-case basis. Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters, five feet, if relief is greater than 6.1 meters, 20 feet, or an interval of 0.6 meters, two feet, if relief is less than 6.1 meters, 20 feet. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittent streams.

(iv) Surrounding land uses, residential, commercial, agricultural, recreational.

(v) A wind rose, i.e., prevailing windspeed and direction.

(vi) Orientation of map, north arrow.

(vii) Legal boundaries of the hazardous waste management facility site.

(viii) Access control, fences, gates.

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structures, recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within hazardous waste management facility site, where hazardous waste is, or will be, treated, stored, or disposed, include equipment cleanup areas.

(20) Applicants may be required to submit such information as may be necessary to enable the Executive Secretary and the Board to carry out duties under State laws and Federal laws as specified in 40 CFR 270.3.

(21) For land disposal facilities, if a case-by-case extension has been approved under R315-13, which incorporates by reference 40 CFR 268.5, or a petition has been approved under R315-13, which incorporates by reference 40 CFR 268.6, a copy of the notice of approval for the extension is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comment or materials submitted at the meeting, as required under R315-3-38.1(c).

R315-3-6. Specific Part B Information Requirements.

The following additional information is required from owners or operators of specific types of hazardous waste management facilities that are used or to be used for storage, treatment, or disposal;

6.1 SPECIFIC PART B INFORMATION REQUIREMENTS FOR CONTAINERS

For facilities that store containers of hazardous waste, except as otherwise provided in R315-8-9.1,

(a) A description of the containment system to demonstrate compliance with R315-8-9.6. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with R315-8-9.6(c) including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with R315-8-9.7, location of buffer zone and containers holding ignitable or reactive wastes, and R315-8-9.8(c), location of incompatible wastes, where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with R315-8-9.8(a) and (b) and R315-8-2.8.

(e) Information on air emission control equipment as required in R315-3-6.13, which incorporates by reference 40 CFR 270.27.

6.2 SPECIFIC PART B INFORMATION REQUIREMENTS FOR TANK SYSTEMS

For facilities that use tanks to store or treat hazardous waste the requirements of 40 CFR 270.16, 1996 ed., are adopted and incorporated by reference.

6.3 SPECIFIC PART B INFORMATION REQUIREMENTS FOR SURFACE IMPOUNDMENTS

For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in R315-8-11.1.

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-2.10, R315-8-11.2, R315-8-11.9, R315-8-11.10, addressing the following items:

(1) The liner system, except for an existing portion of a surface impoundment. If an exemption from the requirement for a liner is sought as provided by R315-8-11.2(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(2) The double liner and leak, leachate, detection, collection, and removal system, if the surface impoundment must meet the requirements of R315-8-11.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-11.2(d), (e), or (f), submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(5) Proposed action leakage rate, with rationale, if required under R315-8-11.9, and response action plan, if required under R315-8-11.10;

(6) Prevention of overtopping; and

(7) Structural integrity of dikes;

(c) A description of how each surface impoundment, including the double liner, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of R315-8-11.7(a), (b), and (d). This information should be included in the inspection plan

submitted under R315-3-5(b)(5).

(d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under R315-8-11.7(c). For new units, the owner or operator shall submit a statement by a qualified engineer that he will provide a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under R315-8-11.8(b) and (c). This information should be included in the contingency plan submitted under R315-3-5(b)(7).

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under R315-8-11.9(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-11.9(a)(2) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-5(b)(13).

(g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how R315-8-11.10 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how R315-8-11.11 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-11.12. This submission must address the following items as specified in R315-8-11.12:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlying and surrounding soils or other materials:

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(j) Information on air emission control equipment as required by R315-3-6.13, which incorporates by reference 40 CFR 270.27.

6.4 SPECIFIC PART B INFORMATION REQUIREMENTS FOR WASTE PILES

For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in R315-8-12.1;

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to R315-8-12.2 and R315-8-6 as provided by R315-8-12.1(c) or R315-8-6(b)(2), an explanation of how the standards of R315-8-12.1(c) will be complied with or detailed plans and an engineering report describing how the requirements of R315-8-6(b)(2) will be met.

(c) Detailed plans and an engineering report describing how the waste pile is or will be designed, constructed, operated and maintained to meet the requirements of R315-8-2.10, R315-8-12.2, R315-8-12.8, and R315-8-12.9, addressing the following items:

(1)(i) The liner system, except for an existing portion of a waste pile, if the waste pile must meet the requirements of R315-8-12.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-12.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate, detection, collection, and removal system, if the waste pile must meet the requirements of R315-8-12.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-12.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-12.8, and response action plan, if required under R315-8-12.9;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-12.3(a), (b), and (c). This information must be included in the inspection plan submitted under R315-3-5(b)(5).

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of R315-8-12.7 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how R315-8-12.8 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under R315-8-12.9(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-14.11(a) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-5(b)(13).

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026 and F027 describing how a waste pile that is not enclosed, as defined in R315-8-12.1(c)

is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-12.10. This submission must address the following items as specified in R315-8-12.10:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlying and surrounding soils or other materials:

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

6.5 SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS

For facilities that incinerate hazardous waste, except as R315-8-15.1 provides otherwise, the applicant shall fulfill the requirements of R315-3-6.5(a), (b), and (c).

(a) When seeking exemption under R315-8-15.1(b) or (c), ignitable, corrosive or reactive wastes only;

(1) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in R315-2-9(f) and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of the trial burn, including all required determinations, in accordance with R315-3-20; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in 40 CFR part 261 Appendix VIII, as incorporated by reference at R315-50-10, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in R315-8-15.4.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in R315-3-6(a)(5)(iii)(A). This analysis should specify the POHC's which the applicant has identified in the waste for which a plan approval is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in R315-8-15.4.

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with R315-8-15.4 and R315-8-15.6 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control

procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Any supplemental information as the Executive Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in R315-3-6(a)(5)(iii)(A), sufficient to allow the Executive Secretary to specify as plan approval Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Executive Secretary shall approve a plan approval application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under R315-8-15.6, operating conditions that will ensure that the performance standards in R315-8-15.4 will be met by the incinerator.

6.6 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LAND TREATMENT FACILITIES

For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in R315-8-13.1:

(a) A description of plans to conduct a treatment demonstration as required under R315-8-13.3. The description shall include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test, e.g., column leaching, degradation;

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(b) A description of a land treatment program, as required under R315-8-13.2. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with R315-8-13.4(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content.

(3) Provisions for unsaturated zone monitoring including:

(i) Sampling equipment, procedures and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for the selection in R315-8-13.9(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to R315-8-2.4, which incorporates by reference 40 CFR 264.13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of R315-8-13.4. This submission shall address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under R315-3-5(b)(5).

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under R315-8-13.7 will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made;

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(e) If food-chain crops are to be grown, and cadmium is present in the land treated waste, a description of how the requirements of R315-8-13.7(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under R315-8-13.11(a)(8) and R315-8-13.11(c)(2). This information should be included in the closure plan, and, where applicable, the post-closure care plan submitted under R315-3-5(b)(13).

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of R315-8-13.12 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how R315-8-13.13 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-13.14. This submission must address the following items as specified in R315-8-13.14:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or

to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

6.7 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LANDFILLS

For facilities that dispose of hazardous waste in landfills, except as otherwise provided in R315-8-14.1.

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of R315-8-2.10, R315-8-14.2., R315-8-14.3, and R315-8-14.12, addressing the following items:

(1)(i) The liner system, except for an existing portion of a landfill, if the landfill must meet the requirements of R315-8-14.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-14.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of R315-8-14.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-14.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-14.12, and response action plan, if required under R315-8-14.3;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable.

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-14.3(a), (b), and (c). This information must be included in the inspection plan submitted under R315-3-5(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of R315-8-14.4(a) and (b). This information should be included in the inspection plan submitted under R315-3-5(b)(5).

(e) Detailed plans and engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with R315-8-14.11(a), and a description of how each landfill will be maintained and monitored after closure in accordance with R315-8-14.11(b). This information should be included in the closure and post-closure plans submitted under R315-3-5(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of R315-8-14.13 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how R315-8-14.14 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of R315-8-14.15 will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of R315-8-14.16 or R315-8-14.17 as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-14.18. This submission must address the following items as specified in R315-8-14.18:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

6.8 SPECIFIC PART B INFORMATION REQUIREMENTS FOR MISCELLANEOUS UNITS

For facilities that treat, store or dispose of hazardous waste in miscellaneous units except as otherwise provided in R315-8-16, which incorporates by reference 40 CFR 264.600.

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of R315-8-16, which incorporates by reference 40 CFR 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601. If the applicant can demonstrate that he does not violate the

environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601 and the Executive Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of these exposures;

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data;

(e) Any additional information determined by the Executive Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601.

6.9 SPECIFIC PART B INFORMATION REQUIREMENTS FOR PROCESS VENTS

For facilities that have process vents to which R315-8-17 applies, which incorporates by reference 40 CFR Subpart AA of 264, the requirements of 40 CFR 270.24, 1991 ed., regarding information requirements for process vents are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

6.10 SPECIFIC PART B INFORMATION REQUIREMENTS FOR EQUIPMENT

For facilities that have equipment to which R315-8-18 applies, which incorporates by reference 40 CFR Subpart BB of 264, the requirements of 40 CFR 270.25, 1991 ed., regarding information requirements for equipment are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

6.11 SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

For facilities that burn hazardous wastes in boilers and industrial furnaces which R315-14-7 applies, which incorporates by reference 40 CFR Subpart H, 266.100 through 266.112, the requirements of 40 CFR 270.22, 1991 ed., as amended by 56 FR 32688, July 17, 1991, are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

6.12 SPECIFIC PART B INFORMATION REQUIREMENTS FOR DRIP PADS

For facilities that have drip pads to which R315-8-19 applies, which incorporates by reference 40 CFR Subpart W, 264.570 through 264.575, the requirements of 40 CFR 270.26, 1991 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

6.13 SPECIFIC PART B INFORMATION REQUIREMENTS FOR AIR EMISSION CONTROLS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

The requirements as found in 40 CFR 270.27 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference.

6.14 PART B INFORMATION REQUIREMENTS FOR POST-CLOSURE PERMITS

For post-closure permits, the owner or operator is required to submit only the information specified in R315-3-5(b)(1), (4), (5), (6), (11), (13), (14), (16), (18), (19), and R315-3-7(a) and (b), unless the Executive Secretary determines that additional information from R315-3-5, R315-3-6.2, which incorporates by reference 40 CFR 270.16, R315-3-6.3, R315-3-6.4, R315-3-6.6, or R315-3-6.7 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in R315-3-3(s).

R315-3-7. Additional Part B Information Requirements.

(a) The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as otherwise provided in R315-8-6.1.

(1) A summary of the groundwater monitoring data obtained during the interim status period under R315-7-13 where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for the identification, i.e., the information obtained from hydrogeologic investigations of the facility area.

(3) On the topographic map required under R315-3-5(b)(19), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined in R315-8-6.6, the proposed location of groundwater monitoring wells as required by R315-8-6.8 and, to the extent possible, the information required in R315-3-7(a)(2);

(4) A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:

(i) Delineates the extent of the plume on the topographic map required under R315-3-5(b)(19);

(ii) Identifies the concentration of each constituent listed in section R315-50-14, which incorporates by reference Appendix IX of 40 CFR 264, throughout the plume or identifies the maximum concentrations of each constituent listed in section R315-50-14 in the plume.

(5) Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of R315-8-6.8.

(6) If the presence of hazardous constituents has not been detected in the groundwater at the time of plan approval application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of R315-8-6.9. This submission shall address the following items as specified under R315-8-6.9:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the groundwater;

(ii) A proposed groundwater monitoring system;

(iii) Background values for each proposed monitoring parameters or constituent, or procedures to calculate the values; and

(iv) A description of proposed sampling, analysis and

statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(7) If the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of plan approval application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of R315-8-6.10. Except as provided in R315-8-6.9(h)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of R315-8-6.11, unless the owner or operator obtains written authorization in advance from the Executive Secretary to submit a proposed permit schedule for submittal of a plan. To demonstrate compliance with R315-8-6.10, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated groundwater, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with R315-8-6.8 and R315-8-6.10;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in R315-8-6.5(a) including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of R315-8-6.8, and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(8) If hazardous constituents have been measured in the groundwater which exceed the concentration limits established under R315-8-6.5 Table 1, or if groundwater monitoring conducted at the time of plan approval application under R315-8-6.1 - R315-8-6.5 at the waste boundary indicates the presence of hazardous constituents from the facility in groundwater over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of R315-8-6-11. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Executive Secretary that alternate concentration limits will protect human health and the environment after considering the criteria listed in R315-8-6.5(b). An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of R315-8-6.10 and R315-3-7(a)(6). To demonstrate compliance with R315-8-6.11, the owner or operator shall address, at a minimum, the following items:

(i) A characterization of the contaminated groundwater, including concentration of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the groundwater as set forth in R315-8-6.5;

(iii) Detailed plans and engineering report describing the corrective action to be taken; and

(iv) A description of how the groundwater monitoring program will assess the adequacy of the corrective action.

(v) The plan approval may contain a schedule for submittal of the information required in R315-3-7(a)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Executive Secretary prior to submittal of the complete plan approval application.

(9) An intended schedule of construction shall be submitted with the plan approval application and will be incorporated into the plan approval as an approval condition. Facility plan approvals shall be reviewed by the Executive Secretary no later than 18 months from the date of plan approval issuance, and periodically thereafter, to determine if a program of continuous construction is proceeding. Failure to maintain a program of continuous construction may result in revocation of the plan approval.

(b) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a plan approval:

(i) the location of the unit on the topographic map required under R315-3-5(a)(19);

(ii) designation of type of unit;

(iii) general dimensions and structural description, supply any available drawings;

(iv) when the unit was operated; and

(v) specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from the unit or units.

(3) The owner or operator must conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Executive Secretary ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(c) Recordkeeping. Applicants shall keep records of all data used to complete plan approval application and any supplemental information submitted under R315-3-4 through R315-3-7, inclusive, for a period of at least three years from the date the application is signed.

(d) Exposure Information.

(1) Any Part B plan approval application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, the information must address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under R315-3-7(d)(1); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) Owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in R315-3-7(d).

R315-3-8. Signatories to Plan Approval Applications and Reports.

(a) Applications. All plan approval applications shall be signed as follows:

(1) For a corporation: by a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency; by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by plan approvals and other information requested by the Executive Secretary shall be signed by a person described in R315-3-8(a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in R315-3-8(a);

(2) The authorization specified either an individual or a position having responsibility for overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Executive Secretary.

(c) Changes to authorization. If an authorization under R315-3-8(b) is no longer accurate because different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of R315-3-8(b) shall be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under R315-3-8(a) or (b) shall make the following certification:

(1) "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

R315-3-9. Plan Approval Denial.

The Executive Secretary may, pursuant to the procedures in this rule, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

R315-3-10. Conditions Applicable to Plan Approvals.

The following conditions apply to all plan approvals. All conditions applicable to plan approvals shall be incorporated into the plan approvals either expressly or by reference. If incorporated by reference, a specific citation of these rules shall be given in the plan approval.

(a) Duty to comply. The permittee shall comply with all conditions of this plan approval, except that the permittee need not comply with the conditions of this plan approval to the extent and for the duration any noncompliance is authorized in an emergency permit. Any plan noncompliance except under the terms of an emergency permit, constitutes a violation of the Utah Solid and Hazardous Waste Act and is grounds for enforcement action; for plan approval termination, revocation and reissuance, or modification; or for denial of a plan approval renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this plan approval after the expiration date of this plan approval, the permittee shall apply for and obtain a new plan approval.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the approved activity in order to maintain compliance with the conditions of this plan approval.

(d) In the event of noncompliance with the plan approval, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out all measures as are reasonable to prevent significant adverse impact on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this plan approval. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the plan approval.

(f) Plan approval actions. This plan approval may be modified, revoked and reissued, or terminated in accordance with the provisions of R315-3-15 or R315-3-16 and the procedures of R315-3-17. The filing of a request by the permittee for a plan approval modification, revocation and reissuance, or termination, or a notification or planned changes or anticipated noncompliance, does not stay any approval condition.

(g) Property rights. This plan approval does not convey any property rights of any sort, or any exclusive privilege.

(h) Party to provide information. The permittee shall furnish to the Executive Secretary within a reasonable time, any relevant information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this plan approval, or to determine compliance with this plan approval. The permittee shall also furnish to the Executive Secretary upon request, copies of

records required to be kept by this plan approval.

(i) Inspection and entry. The permittee shall allow the Executive Secretary, the Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this plan approval;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this plan approval;

(3) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this plan approval; and

(4) Sample or monitor at reasonable times, for the purposes of assuring plan approval compliance or as otherwise authorized by the Utah Solid and Hazardous Waste Act, any substances or parameters at any location.

(j) Monitoring and records.

(1) Sample and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this plan approval, the certification required by R315-8-5.3, which incorporates by reference 40 CFR 264.73, and records of all data used to complete the application for this plan approval, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary and the Board at any time. The permittee shall maintain records of all groundwater quality and groundwater surface elevations, for the active life of the facility, and for the post-closure care period as well.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of all analyses.

(k) Signatory requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified, see R315-3-8.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alterations or additions to the approved facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the approved facility or activity which may result in noncompliance with plan approval requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in R315-3-15(d), which incorporates by reference 40 CFR 270.42, until:

(i) The permittee has submitted to the Executive Secretary by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the plan approval; and

(ii)(A) The Executive Secretary or the Board has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the plan approval; or

(B) Within 15 days of the date of submission of the letter in R315-3-10(l)(2)(i), the permittee has not received notice from the Executive Secretary or Board of their intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) Transfers. The plan approval is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification or revocation and reissuance of the plan approval to change the name of the permittee and incorporate any other requirements as may be necessary. See R315-3-15.

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this plan approval.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this plan approval shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting. See R315-9 for Emergency Controls.

(i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release of hazardous waste or of a fire or explosion from the hazardous waste management facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of

noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The Executive Secretary may waive the five-day written notice requirement in favor of a written report within 15 days.

(7) Manifest discrepancy report. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a letter report, including a copy of the manifest, to the Executive Secretary.

(8) Unmanifested waste report. This report shall be submitted to the Executive Secretary within 15 days of receipt of unmanifested wastes.

(9) Biennial report. A biennial report shall be submitted covering facility activities during odd numbered calendar years.

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under R315-3-10(l)(4), (5), and (6), at the time monitoring reports are submitted. The reports shall contain the information listed in R315-3-10(l)(6).

(11) Other information. Where the permittee becomes aware that he failed to submit any relevant facts in a plan approval application, or submitted incorrect information in a plan approval application or in any report to the Executive Secretary, he shall promptly submit all facts or information.

(m) Information repository. The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in R315-3-38.3(b). The information repository will be governed by the provisions in R315-3-38.3 (c) through (f).

R315-3-11. Duration of Plan Approvals.

(a) Hazardous waste operation plan approvals shall be effective for a fixed term not to exceed ten years.

(b) The term of a plan approval shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Executive Secretary may issue any plan approval for a duration that is less than the full allowable term under this section.

(d) Expiring plan approvals. The conditions of an expired plan approval continue in force until the effective date of a new plan approval if:

(1) The permittee has submitted a timely application under R315-3-5 and the applicable requirements of R315-3-6 and R315-3-7, which is a complete application for a new plan approval; and

(2) The Executive Secretary through no fault of the permittee, does not issue a new plan approval with an effective date on or before the expiration date of the previous plan approval, for example, when issuance is impracticable due to time or resource constraints.

(e) Effect. Plan approvals continued under this section remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired plan approval, the Executive Secretary or Board or both may choose to do any or all of the following:

(1) Initiate enforcement action based upon the plan approval which has been continued;

(2) Issue a notice of intent to deny the new plan approval under R315-3-24. If the plan approval is denied, the owner or operator would then be required to cease the activities authorized by the continued plan approval or be subject to enforcement action for operating without a plan approval;

(3) Issue a new plan approval under R315-3 with appropriate conditions;

(4) Take other actions authorized by these rules.

(g) State Continuation. If the permittee has submitted a timely and complete application, including timely and adequate response to any deficiency notice, for plan approval under applicable State law and rules, the terms and conditions of an EPA issued RCRA permit shall continue in force until the effective date of the State's issuance or denial of a State plan approval.

(h) Permits which have been issued under authority of the Federal Resource Conservation and Recovery Act will be administered by the State when hazardous waste program authorization becomes effective.

(i) Each plan approval for a land disposal facility shall be reviewed by the Board five years after the date of plan approval issuance or reissuance and shall be modified as necessary, as provided in R315-3-15.

R315-3-12. Requirements for Recording and Reporting of Monitoring Results.

All plan approvals shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment of methods, including biological monitoring methods when appropriate;

(b) Required monitoring including type, intervals, and frequency sufficient yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R315-8 and R315-14. Reporting shall be no less frequent than specified in R315-8 and R315-14.

R315-3-13. Effect of a Plan Approval.

(a) Compliance with a plan approval during its term constitutes compliance, for purposes of enforcement, with these rules, except for those requirements not included in the plan approval which:

(1) Become effective by statute;

(2) Are promulgated under R315-13, which incorporates by reference 40 CFR 268, restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under R315-8 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of R315-3-15(d), which incorporates by reference 40 CFR 270.42, Class 1 plan approval modifications; or

(4) Are promulgated under R315-7-26, which incorporates by reference 40 CFR 265.1030 - 265.1035, R315-7-27, which incorporates by reference 40 CFR 265.1050 - 265.1064 or R315-7-30, which incorporates by reference 40 CFR 265.1080 - 1091.

(b) The issuance of a plan approval does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a plan approval does not authorize any injury to person or property or invasion of other private rights, or any infringement of State or local law or regulations.

R315-3-14. Transfer of Plan Approvals.

(a) A plan approval may be transferred by the permittee to a new owner or operator only if the plan approval has been modified or revoked and reissued under R315-3-14(b) or R315-3-15(b)(2) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Executive Secretary in accordance with R315-3-15(d). The new owner or operator shall submit a revised plan approval application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of plan approval responsibility between the current and new permittees shall also be submitted to the Executive Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of R315-8-8, which incorporates by reference 40 CFR Part 264, Subpart H, until the new owner or operator has demonstrated that he is complying with the requirements of that section. The new owner or operator shall demonstrate compliance with R315-8-8, which incorporates by reference 40 CFR Part 264, Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-8-8, which incorporates by reference 40 CFR Part 264, Subpart H, the Executive Secretary shall notify the old owner or operator that he no longer needs to comply with R315-8-8, which incorporates by reference 40 CFR Part 264, Subpart H as of the date of demonstration.

R315-3-15. Modification or Revocation and Reissuance of Plan Approvals.

When the Executive Secretary receives any information, for example, inspects the facility, receives information submitted by the permittee as required in the plan approval see R315-3-10, receives a request for modification or revocation and reissuance under R315-3-17 or conducts review of the plan approval file, he may determine whether one or more of the causes listed in R315-3-15(a) and (b) for modification or revocation and reissuance or both exist. If cause exists, the Executive Secretary may modify or revoke and reissue the plan approval accordingly, subject to the limitations of R315-3-17(c), and may request an updated application if necessary. When a plan approval is modified, only the conditions subject to modification are reopened. If a plan approval is revoked and reissued, the entire plan approval is reopened and subject to revision and the plan approval is reissued for a new term. See R315-3-17(c)(2). If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the plan approval, except on request of the permittee. If a plan approval modification is requested by the permittee, the Executive Secretary shall approve or deny the request according to the procedures of R315-3-15(d), which incorporates by reference 40 CFR 270.42. Otherwise, a draft plan approval shall be prepared and other procedures in R315-3-24 followed.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of plan approvals, and the following may be causes for revocation and reissuance as well as modification under any program when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the approved facility or activity which occurred after plan approval issuance which justify the application of plan approval conditions that are different or absent in the existing plan approval.

(2) Information. The Executive Secretary has received information. Plan approvals may be modified during their terms for this cause only if the information was not available at the time of plan approval issuance, other than revised rules, guidance, or test methods, and would have justified the application of different plan approval conditions at the time of issuance.

(3) New statutory requirements or rules. The standards or rules on which the plan approval was based have been changed by statute, through promulgation of new or amended standards or rules or by judicial decision after the plan approval was issued.

(4) Compliance schedules. The Executive Secretary determined good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a plan approval for a land disposal facility is reviewed by the Executive Secretary under R315-3-11(i), the Executive Secretary shall modify the plan approval as necessary to assure that the facility continues to comply with the currently applicable requirements in these rules.

(b) Causes for modification or revocation and reissuance. The following are causes to modify, or, alternatively, revoke and reissue a plan approval;

(1) Cause exists for termination under R315-3-16 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Executive Secretary has received notification as required in the plan approval, see R315-3-10(l)(3) of a proposed transfer of the plan approval.

(c) Facility siting. Suitability of the facility location may not be considered at the time of plan approval modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of plan approval issuance.

(d) Plan Approval Modification at the request of the permittee.

The requirements of 40 CFR 270.42, including Appendix

I, 1998 ed., are adopted and incorporated by reference with the following exceptions;

(1) substitute "Executive Secretary" for all Federal regulation references made to "Director" or "Administrator";

(2) substitute "Plan Approval" for all Federal regulation references made to "Permit".

R315-3-16. Termination of Plan Approvals.

(a) The following are causes for terminating a plan approval during its term, or for denying a plan renewal application:

(1) Noncompliance by the permittee with any condition of the plan approval;

(2) The permittee's failure in the application or during the plan approval issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by plan approval modification or termination.

(b) The Executive Secretary shall follow the applicable procedures in R315-3-17 in terminating any plan approval under this section.

R315-3-17. Procedures for Modification, Revocation and Reissuance, or Termination of Plan Approvals.

(a) Plan approvals may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative. However, plan approvals may only be modified, revoked and reissued, or terminated for the reasons specified in R315-3-15 or R315-3-16. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Executive Secretary decides the request is not justified, they shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Executive Secretary may be appealed to the Board by a letter briefly setting forth the relevant facts. The Board may direct the Executive Secretary to begin modification, revocation and reissuance, or termination proceedings under R315-3-17(c). The Board shall take action on any request within 60 days after receiving it. The Board shall either approve or deny the request, or advise the requestor that an extension of time is necessary for the Board to render a decision on the request.

(c)(1) If the Executive Secretary tentatively decides to modify or revoke and reissue a plan approval under R315-3-15, he shall prepare a draft plan approval under R315-3-24 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified plan approval, may require the submission of an updated plan approval application. In the case of revoked and reissued plan approvals, the Executive Secretary shall require the submission of a new application.

(2) In a plan approval modification under this section, only those conditions to be modified shall be reopened when a new draft plan approval is prepared. All other aspects of the existing plan approval shall remain in effect for the duration of the unmodified plan. When a plan is revoked and reissued under this section, the entire plan approval is reopened just as if the plan approval had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing plan approval until a new final plan approval is reissued.

(3) Classes 1 and 2 modifications, as defined in R315-3-15(d), which incorporates by reference 40 CFR 270.42(a) and (b), are not subject to the requirements of this section.

(d) If the Executive Secretary tentatively decides to terminate a plan approval under R315-3-16, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft plan approval which follows the same procedures as any draft plan approval prepared under R315-3-24.

R315-3-18. Permits by Rule.

Notwithstanding any other provisions of these rules, the following shall be deemed to have an approved hazardous waste operation plan if the conditions listed are met:

(a) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under State or Federal law.

(2) Complies with the conditions of that permit and the requirements in R317-7, Underground Injection Control Program, for managing hazardous waste in a well.

(3) For UIC permits issued after November 8, 1984:

(i) complies with R315-8-6.12; and

(ii) where the UIC well is the only unit at a facility which requires a plan approval, complies with R315-3-7(b).

(b) Publicly owned treatment works. The owner or operator of a POTW which accepts hazardous waste, for treatment if the owner or operator:

(1) Has an NPDES permit;

(2) Complied with the conditions of that permit;

(3) Complies with the following rules;

(i) R315-8-2.2, Identification number;

(ii) R315-8-5.2, Use of Manifest system;

(iii) R315-8-5.4, Manifest discrepancies;

(iv) R315-8-5.3, Operating record;

(v) R315-8-5.6, Biennial report;

(vi) R315-8-5.7, Unmanifested waste report;

(vii) R315-8-6.12, For NPDES permits issued after November 8, 1984; and

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(c) Elementary Neutralization Units and Wastewater Treatment Units.

R315-3-19. Emergency Plan Approvals.

(a) Notwithstanding any other provisions of this rule, in the event the Executive Secretary finds an imminent and substantial endangerment to human health or the environment the Executive Secretary may issue a temporary emergency permit: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous

waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous waste to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Executive Secretary at any time without process if he determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under R315-3-26(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted hazardous waste management facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of R315-8.

R315-3-20. Hazardous Waste Incinerator Plan Approvals.

(a) For the purposes of determining operational readiness following completion of physical construction, the Executive Secretary shall establish plan approval conditions, including but not limited to allowable waste feeds and operating conditions, in the plan approval to a new hazardous waste incinerator. These plan approval conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Executive Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The plan approval may be modified to reflect the extension according to R315-3-15(d), which incorporates by reference 40 CFR 270.42.

(1) Applicants shall submit a statement, with Part B of the plan approval application, which suggests the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with Part B of the plan approval and specify requirements for this period sufficient to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(b) For the purpose of determining feasibility of compliance with the performance standards of R315-8-15.4, and of determining adequate operating conditions under R315-8-15.6, the Executive Secretary shall establish conditions in the plan approval to a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under R315-3-20(b)(2) with Part B of the plan approval application.

(2) The trial burn plan shall include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity, if applicable, or description of physical form of the waste.

(C) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 260.11 and 270.6, see R315-1-2, or, their equivalent.

(ii) A detailed engineering description of the incinerator for which the plan approval is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system type and feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations of the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Executive Secretary's decision under R315-3-20(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) All other information as the Executive Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purpose of this paragraph and the criteria in R315-3-20(b)(5).

(3) The Executive Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Executive Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Executive Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in R315-2-10, the hazardous waste organic constituent or constituents identified in R315-50-10 as the basis for listing.

(5) The Executive Secretary shall approve a trial burn plan if it finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by R315-8-15.4 can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Executive Secretary to determine operating requirements to be specified under R315-8-15.6; and

(iv) The information sought in R315-3-20(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Executive Secretary shall send a notice to all persons on the facility mailing list as set forth in R315-3-26(c)(1)(v) and to the appropriate units of State and local government as set forth in R315-3-26(c)(1)(iv) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Executive Secretary has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in R315-8-15.4(a).

(v) If the HC1 emission rate exceeds 1.8 kilograms of HC1 per hour (4 pounds per hour), a computation of HC1 removal efficiency in accordance with R315-8-15.4(b).

(vi) A computation of particulate emissions in accordance with R315-8-15.4(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) All other information as the Executive Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in R315-8-15.4 and to establish the operating conditions required by R315-8-15.6 as necessary to meet that performance standard.

(8) The applicant shall submit to the Executive Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in R315-3-20(b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Executive Secretary.

(9) All data collected during any trial burn shall be submitted to the Executive Secretary following the completion of the trial burn.

(10) All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a plan approval application or a report under R315-3-8.

(11) Based on the results of the trial burn, the Executive Secretary shall set the operating requirements in the final plan approval according to R315-8-15.6. The plan approval modification shall proceed according to R315-3-15(d), which incorporates by reference 40 CFR 270.42.

(c) For the purpose of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the plan approval conditions to reflect the trial burn results, the Executive Secretary may establish plan approval conditions, including but no limited to allowable waste feeds and operating conditions sufficient to meet the requirements of R315-8-15.6, in the plan approval to a new hazardous waste incinerator. These plan approval conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility plan approval by the Executive Secretary.

(1) Applicants shall submit a statement, with Part B of the plan approval application, which identifies the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement

should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with Part B of the plan approval application and specify those requirements for this period most likely to meet the performance standards of R315-8-15.4 based on its engineering judgement.

(d) For the purposes of determining feasibility of compliance with the performance standards of R315-8-15.4 and of determining adequate operating conditions under R315-8-15.6, the applicant for a plan approval for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with R315-3-6.5(b) and R315-3-20(b)(2) through (b)(9) or, instead, submit other information as specified in R315-3-6.5(c). The Executive Secretary shall announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of R315-3-20(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under R315-3-6.5(a) are exempt from compliance with R315-8-15.4 and R315-8-15.6 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a plan approval application shall complete the trial burn and submit the results, specified in R315-3-20(b)(6), with Part B of the plan approval application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the Executive Secretary to establish a later date for submission of the Part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the plan approval. When the applicant submits a trial burn plan with Part B of the plan approval application, the Executive Secretary will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

R315-3-21. Plan Approvals for Land Treatment Demonstrations Using Field Test or Laboratory Analyses.

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of R315-8-13.3, the Executive Secretary may issue a treatment demonstration plan approval. The plan approval shall contain only those requirements necessary to meet the standards in R315-8-13.3(c). The plan approval may be issued either as a treatment or disposal approval covering only the field test or laboratory analyses, or as a two-phase facility approval covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(1) The Executive Secretary may issue a two-phase facility plan approval if they find that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility plan approval.

(2) If the Executive Secretary finds that not enough information exists upon which they can establish plan approval conditions to attempt to provide for compliance with all the requirements of R315-8-13, they shall issue a treatment demonstration plan approval covering only the field test or laboratory analyses.

(b) If the Executive Secretary finds that a phased plan approval may be issued, they will establish, as requirements in the first phases of the facility plan approval, conditions for conducting the field tests or laboratory analyses. These plan approval conditions will include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, post-demonstration cleanup activities, and any other conditions which the Executive Secretary finds may be necessary under R315-8-13.3(c). The Executive Secretary will include conditions in the second phase of the facility plan approval to attempt to meet all R315-8-13 requirements pertaining to unit design, construction, operation, and maintenance. The Executive Secretary will establish these conditions in the second phase of the plan approval based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the plan approval will be effective as provided in R315-3-12(c).

(2) The second phase of the plan approval will be effective as provided in R315-3-21(d).

(c) When the owner or operator who has been issued a two-phase plan approval has completed the treatment demonstration, he shall submit to the Executive Secretary certification, signed by a person authorized to sign a plan approval application or report under R315-3-8, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the plan approval for conducting the tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Executive Secretary approves a later date.

(d) If the Executive Secretary determines that the results of the field tests or laboratory analyses meet the requirements of R315-8-13.3, they will modify the second phase of the plan approval to incorporate any requirement necessary for operation of the facility in compliance with R315-8-13, based upon the results of the field tests or laboratory analyses.

(1) This plan approval modification may proceed under R315-3-15(d), which incorporates by reference 40 CFR 270.42, or otherwise will proceed as a modification under R315-3-15(b)(2). If such modifications are necessary, the second phase of the plan approval will become effective only after those modifications have been made.

(2) If no modification of the second phase of the plan approval are necessary, the Executive Secretary will give notice of his final decision to the plan approval applicant and to each person who submitted written comments on the phased plan approval or who requested notice of final decision on the second phase of the plan approval. The second phase of the plan

approval then will become effective as specified in R315-3-21.

R315-3-22. Research, Development, and Demonstration Plan Approvals.

(a) The Executive Secretary may issue a research, development, and demonstration plan approval for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which plan approval standards for any experimental activity have not been promulgated under R315-8 and R315-14. Any such plan approvals shall include such terms and conditions as will assure protection of human health and the environment. These plan approvals:

(1) Shall provide for the construction of these facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in R315-3-22(d), and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Executive Secretary deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of the technology or process on human health and the environment; and

(3) Shall include all requirements as the Executive Secretary deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and all requirements as the Executive Secretary or Board or both deems necessary regarding testing and providing of information to the Executive Secretary with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of plan approval under this section, the Executive Secretary may, consistent with the protection of human health and the environment, modify or waive plan approval application and plan approval issuance requirements in R315-3 except that there may be no modification or waiver of regulations regarding financial responsibility, including insurance, or of procedures regarding public participation.

(c) The Executive Secretary or Board or both may order an immediate termination of all operations at the facility at any time they determine that termination is necessary to protect human health and the environment.

(d) Any plan approval issued under this section may be renewed not more than three times. Each renewal shall be for a period of not more than one year.

R315-3-23. Establishing Plan Approval Conditions.

In addition to the conditions established, each plan approval shall include:

(a) A list of the wastes or classes of wastes which will be treated, stored, or disposed of at the facility, and a description of the processes to be used for treating, storing, and disposing of these hazardous wastes at the facility including the design capacities of each storage, treatment, and disposal unit. Except in the case of containers, the description shall identify the particular wastes or classes of wastes which will be treated, stored, or disposed of in particular equipment or locations, e.g., "Halogenated organics may be stored in Tank A", and "Metal hydroxide sludges may be disposed of in landfill cells B, C, and D", and

(b)(1) Each plan approval shall include conditions necessary to achieve compliance with the Utah Solid and Hazardous Waste Act and these rules, including each of the applicable requirements specified in R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266. In satisfying this provision, the Executive Secretary may incorporate applicable requirements of R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266, directly into the plan approval or establish other plan approval conditions that are based on these rules.

(2) Each plan approval issued under the Utah Solid and Hazardous Waste Act shall contain terms and conditions as the Executive Secretary determines necessary to protect human health and the environment.

(c) New or reissued plan approvals, and to the extent allowed under R315-3-15, modified or revoked and reissued plan approvals, shall incorporate each of the applicable requirements referenced in R315-3-23 and R315-3-12.

(d) Incorporation. All plan approval conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable requirements shall be given in the plan approval.

(e) The plan approval may, when appropriate, specify a schedule of compliance leading to compliance with these rules.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in R315-3-23(f)(1)(ii), if a plan approval establishes a schedule of compliance which exceeds one year from the date of plan approval issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the plan approval shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The plan approval shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary or Board or both in writing, of its compliance or noncompliance with the interim or final requirement, or submit progress reports if R315-3-13(c)(2)(ii) is applicable.

(f) Alternative schedules of plan approval compliance. An applicant or permittee may cease conducting regulated activities, by receiving a terminal volume of hazardous waste, and for treatment and storage facilities, closing pursuant to applicable requirements; and for disposal facilities, closing and conducting post-closure care pursuant to applicable requirement, rather than continue to operate and meet plan approval requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a plan approval

which has already been issued:

(i) The plan approval may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting activities before noncompliance with any interim or final compliance schedule requirement already specified in the plan approval.

(2) If the decision to cease conducting regulated activities is made before issuance of a plan approval whose term will include the termination date, the plan approval shall contain a schedule leading to plan approval termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a plan approval to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) On schedule shall lead to timely compliance with applicable requirements.

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each plan approval containing two schedules shall include a requirement that after the permittee has made a final decision under R315-3-23(f)(3)(i) it shall follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as resolution of the board of directors of a corporation.

R315-3-24. Draft Plan Approval.

(a) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft plan approval or to deny the application.

(b) If the Executive Secretary tentatively decides to deny the plan, he shall issue a notice of intent to deny. A notice of intent to deny the plan approval application is a type of draft plan approval which follows the same procedures as any draft plan approval prepared under this section. If the Executive Secretary's final decision is that the tentative decision to deny the plan approval application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft plan approval under R315-3-24(c).

(c) If the Executive Secretary decides to prepare a draft plan approval, he shall prepare a draft plan approval that contains the following information:

(1) All conditions under R315-3-10 or R315-3-23;

(2) All compliance schedules under R315-3-23 (e) and (f);

(3) All monitoring requirements under R315-3-12; and

(4) Standards for treatment, storage, or disposal or all and other plan approval conditions under R315-3-10.

(d) All draft plan approvals prepared by the Executive Secretary under this section shall be publicly noticed and made available for public comment. The Executive Secretary shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments.

R315-3-25. Fact Sheet Required.

(a) A fact sheet shall be prepared by the Executive Secretary for every draft plan approval. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft plan approval. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft plan approval.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) A brief summary of the basis of the draft plan approval conditions including references to applicable statutory or regulatory provisions and appropriate supporting references.

(4) Reasons why any requested variance or alternatives to required standards do or do not appear justified.

(5) A description of the procedures for reaching a final decision on the draft plan approval including:

(i) The beginning and ending dates of the comment period under R315-3-27 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(6) Name and telephone number of a person to contact for additional information.

R315-3-26. Public Notice of Plan Approval Actions and Public Comment Period.

(a) Scope.

(1) The Executive Secretary shall give public notice that the following actions have occurred:

(i) The plan approval application has been tentatively denied under R315-3-24(b).

(ii) A draft plan approval has been prepared under R315-3-24(c).

(iii) A hearing has been scheduled under R315-3-28; or

(iv) An appeal has been granted by the Board.

(2) No public notice is required when a request for a plan approval modification, revocation and reissuance, or termination is denied under R315-3-17(b). Written notice of that denial shall be given to the requestor and to the permittee.

(3) Public notices may describe more than one plan approval or plan approval action.

(b) Timing.

(1) Public notice of the preparation of a draft plan approval, including a notice of intent to deny a plan application, required under R315-3-26(a), shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be

given at the same time as public notice of the draft plan approval and the two notices may be combined.

(c) Methods.

Public notices of activities described in R315-3-26(a)(1) shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons:

(i) The applicant;

(ii) Any other agency which the Executive Secretary knows has issued or is required to issue a plan approval, for the same facility or activity including EPA;

(iii) Federal and State agencies with jurisdiction over fish, and wildlife resources, State Historic Preservation Officers, and other appropriate government authorities;

(iv)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located;

(B) To each State agency having any authority under State law with respect to the construction or operation of the facility; and

(v) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for area lists from participants in past plan approval proceedings in the area of the facility; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in regional- and state-funded newsletters, environmental bulletins, or law journals. The Executive Secretary may update the mailing list by requesting written indication of continued interest from those listed. The Executive Secretary may delete from the list the name of any person who fails to respond to a request from the Executive Secretary to remain on the mailing list.

(2) Publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity and broadcast over local radio stations;

(3) In a manner constituting legal notice to the public under State law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d)(1) All public notices issued under this section shall contain the following minimum information:

(i) Name and address of the permittee or plan approval applicant and, if different, of the facility or activity regulated by the plan approval;

(ii) A brief description of the business conducted at the facility or activity described in the plan approval application or draft plan approval;

(iii) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft plan approval or fact sheet, and the application;

(iv) A brief description of the comment procedures required by R315-3-27 and R315-3-28, and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled and other procedures by which the public may participate in the final plan approval decision; and

(v) Any additional information considered necessary or proper.

(2) Public notices of hearings. In addition to the general public notice described in R315-3-26(d)(1), the public notice of a hearing under R315-3-28, shall contain the following information:

(i) Reference to the date of previous public notices relating the plan approval;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(e) In addition to the general public notice described in R315-3-26(d)(1), all persons identified in R315-3-26(c)(1)(i), (ii), and (iii) shall be mailed a copy of the fact sheet.

R315-3-27. Public Comments and Requests for Public Hearings.

During the public comment period provided under R315-3-26, any interested person may submit written comments on the draft plan approval and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R315-3-29.

R315-3-28. Public Hearings.

(a)(1) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft plan approval.

(2) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the plan approval decision.

(3)(i) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a draft plan approval and a request for a hearing within 45 days of public notice under R315-3-26(b).

(ii) Whenever possible the Executive Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in R315-3-26.

(b) Any person may submit oral or written statements and data concerning the draft plan approval. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R315-3-26 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the hearing shall be made available to the public.

R315-3-29. Response to Comments.

(a) At the time that any final plan approval decision is issued, the Executive Secretary shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft plan approval have been changed in the final plan approval decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft plan approval or plan approval application raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

R315-3-30. Operation During Interim Status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit or plan approval application;

(2) Employ processes not specified in Part A of the permit or plan approval application; or

(3) Exceed the design capacities specified in Part A of the permit or plan approval application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in R315-7.

R315-3-31. Changes During Interim Status.

(a) Except as provided in R315-3-31(b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the plan approval application and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification if the owner or operator submits a revised Part A plan approval application prior to treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to a change, along with a justification explaining the need for the change, and the Executive Secretary approves the changes because :

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A plan approval application prior to such change, along with a justification explaining the need for the change, and the Executive Secretary approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A plan approval application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, until the new owner or operator has demonstrated to the Executive Secretary that he is complying with the requirements of that section. The new owner or operator must demonstrate compliance with R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, the Executive Secretary shall notify the old owner or operator in writing that he no longer needs to comply with R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued, under 19-6-105(d), or by EPA under section 3008(h) RCRA or other Federal authority or by a court in a judicial action brought by EPA or by an authorized state. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under this paragraph, changes listed under R315-3-31(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of R315-7-17, which incorporates by reference 40 CFR 265.193, for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o) of RCRA.

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued, under Subsection 19-6-105(d), or by EPA under section 3008(h) of RCRA or other Federal authority, or by a court in a judicial proceeding brought by EPA, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks or containers, or

containment buildings, hazardous wastes subject to land disposal restrictions imposed by R315-13, which incorporates by reference 40 CFR 268, or R315-8, provided that these changes are made solely for the purpose of complying with R315-13, which incorporates by reference 40 CFR 268, or R315-8.

(7) Addition of newly regulated units under paragraph (a)(6) of this section.

(8) Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

R315-3-32. Termination of Interim Status.

Interim status terminates when:

(a) Final administrative disposition of a permit or plan approval application is made; or

(b) Interim status is terminated as provided in 40 CFR 270.10(e)(5) or R315-3-16.

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a Part B application for a plan approval for a facility prior to that date; and

(2) The owner or operator certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Federal Act that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to the permit requirement unless the owner or operator of the facility:

(1) Submits a Part B application for a plan approval for the facility before the date 12 months after the date on which the facility first becomes subject to the plan approval requirement; and

(2) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under R315-3-31(a)(1), (2) or (3), on the date 12 months after the effective date of the requirement, unless the owner or operator certifies that this unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a plan approval for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility, other than a land disposal or an incinerator facility, which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a plan approval for the facility by November 8, 1988.

R315-3-33. Qualifying for Interim Status.

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State or Federal Act that render the facility subject to the requirement to have a RCRA permit or State plan approval shall have interim status and shall be treated as having been issued a plan approval to the extent he or she has:

(1) Complied with the Federal requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity or the notification requirements of these rules.

Comment: Some existing facilities may not be required to file a notification under Section 3010(a) of RCRA. These facilities may qualify for interim status by meeting R315-3-33(a)(2).

(2) Complied with the requirements of 40 CFR 270.10 or R315-3-3 governing submission of Part A applications;

(b) Failure to qualify for interim status. If the Executive Secretary has reason to believe upon examination of a Part A application that it fails to meet the requirements of R315-3-4, the Executive Secretary shall notify the owner or operator in writing of the apparent deficiency. The notice shall specify the grounds for the Executive Secretary's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to the notification and to explain or cure the alleged deficiency in his Part A application. If, after the notification and opportunity for response, the Executive Secretary determines that the application is deficient he may take appropriate enforcement action.

(c) R315-3-33(a) shall not apply to any facility which has been previously denied a plan approval or RCRA permit or if authority to operate the facility under State or federal authority has been previously terminated.

R315-3-34. Public Participation.

In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Executive Secretary will investigate and provide written response to all citizen complaints duly submitted. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

R315-3-35. Required Notification.

(a) No hazardous waste may be transported, treated, stored, or disposed or unless notification has been given as required under this section.

(b) Prior to transporting, treating, storing, or disposing of any hazardous waste, a person shall file with the Executive Secretary a notification, EPA Form 8700-12, stating the location and general description of the activity and the identified or listed hazardous waste handled by this person. Not more than one notification shall be required to be filed with respect to the same substance.

(c) This notification shall be given no later than 90 days after the effective date of any rule of the Executive Secretary

identifying any substance as a hazardous waste subject to these rules.

(d) Submission of an adequate hazardous waste plan approval application under R315-3 and 19-6-108 shall constitute compliance with this section. Submission of a notification with respect to a hazardous waste under Section 3010 of RCRA to EPA shall constitute compliance with this section.

R315-3-36. Commercial Hazardous Waste Facility Siting Criteria.

(a) Applicability.

R315-3-36 applies to all plan approval applications for commercial facilities that have been submitted and that have not yet been approved, as well as all future applications.

(b) Land Use Compatibility and Location.

(1) Siting of commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators, is prohibited within:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including but not limited to, wildlife management areas and habitat for listed or proposed endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) 100 year floodplains, unless, for non-land based facilities only, the conditions found in subsection R315-8-2.9 are met to the satisfaction of the Executive Secretary;

(iv) 200 ft. of Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas likely to be impacted by landslide, mudflow, or other earth movement;

(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas above aquifers containing ground water which has a total dissolved solids (TDS) content of less than 500 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Land disposal facilities are also prohibited above aquifers containing ground water which has a TDS content of less than 3000 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Non-land-based facilities above aquifers containing ground water which has a TDS content of 500 to 3000 mg/l and all facilities above aquifers containing ground water which has a TDS content between 3000 and 10,000 mg/l are permitted only where the depth to ground water is greater than 100 ft. The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification;

(x) recharge zones of aquifers containing ground water which has a TDS content of less than 3000 mg/l. Land disposal facilities are also prohibited in recharge zones of aquifers containing ground water which has a TDS content of less than 10,000 mg/l;

(xi) designated drinking water source protection areas or, if no source protection area is designated, a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for non-land-based facilities and five years ground water travel time plus 1000 feet for land disposal facilities. This requirement does not include on-site facility operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Executive Secretary, of hydraulic conductivity and other information necessary to determine the one or five year ground water travel distance as applicable. The facility operator may be required to conduct vadose zone or other near surface monitoring if determined to be necessary and appropriate by the Executive Secretary;

(xii) five miles of existing permanent dwellings, residential areas, and other incompatible structures including, but not limited to, schools, churches, and historic structures;

(xiii) five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, estuaries, and wetlands; and

(xiv) 1000 ft. of archeological sites to which adverse impacts cannot reasonably be mitigated.

(c) Emergency Response and Transportation Safety.

(1) An assessment of the availability and adequacy of emergency services, including medical and fire response, shall be included in the plan approval application. The application shall also contain evidence that emergency response plans have been coordinated with local and regional emergency response personnel. Plan approval may be delayed or denied if these services are deemed inadequate.

(2) Trained emergency response personnel and equipment are to be retained by the facility and be capable of responding to emergencies both at the site and involving wastes being transported to and from the facility within the state. Details of the proposed emergency response capability shall be given in the plan approval application and will be stipulated in the plan approval.

(3) Proposed routes of transport within the state shall be specified in the plan approval application. No hazardous waste shall be transported on roads where weight restrictions for the road or any bridge on the road will be exceeded in the selected route of travel. Prime consideration in the selection of routes shall be given to roads which bypass population centers. Route selection should consider residential and non-residential populations along the route; the width, condition, and types of roads used; roadside development along the route; seasonal and climatic factors; alternate emergency access to the facility site; the type, size, and configuration of vehicles expected to be hauling to the site; transportation restrictions along the proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of a major accident, including spills and fires.

(d) Exemptions.

Exemptions from the criteria of this section may be granted upon application on a case by case basis by the Solid and Hazardous Waste Control Board after an appropriate public comment period and when the Board determines that there will be no adverse impacts to public health or the environment. The Board cannot grant exemptions which would conflict with applicable regulations and restrictions of other regulatory

authorities.

(e) Completeness of Application.

The plan approval application shall not be considered complete until the applicant demonstrates compliance with the criteria given herein.

(f) Siting Authority.

It is recognized that Titles 10 and 17 of the Utah Code give cities and counties authority for local land use planning and zoning. Nothing in these rules precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R315-3-37. Plan Approvals for Boilers and Industrial Furnaces Burning Hazardous Waste.

The requirements of 40 CFR 270.66, 1996 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

R315-3-38. Specific Procedures Applicable to Hazardous Waste Plan Approvals.

38.1 PRE-APPLICATION PUBLIC MEETING AND NOTICE

(a) Applicability. The requirements of this section shall apply to all Part B applications seeking initial plan approvals for hazardous waste management units. The requirements of this section shall also apply to Part B applications seeking renewal of plan approvals for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 plan approval modification under R315-3-15(d), which incorporates by reference 40 CFR 270.42. The requirements of this section do not apply to permit modifications under R315-3-15(d), which incorporates by reference 40 CFR 270.42, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a Part B plan approval for a facility, the applicant shall hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the Executive Secretary as a part of the Part B application in accordance with R315-3-5(b).

(d) The applicant shall provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Division upon request, documentation of the notice.

(1) The applicant shall provide public notice in all the the following forms:

(i) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspsper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Executive Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Executive Secretary determines that such publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of the section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval from the Executive Secretary.

(iv) A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the Division and local governments in accordance with R315-3-26(c)(1)(iv)(B).

(2) The notices required under paragraph (d)(1) of this section shall include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

38.2 PUBLIC NOTICE REQUIREMENTS AT THE APPLICATION STAGE

(a) Applicability. The requirements of this section shall apply to all Part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to Part B applications seeking renewal of permits for such units under R315-3-11(e) through (g). The requirements of this section do not apply to plan approval modifications under R315-3-15(d), which incorporates by reference 40 CFR 270.42, or plan approval applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Executive Secretary shall provide public notice as set forth in R315-3-26(c)(v), and notice to appropriate units of State and local government as set forth in R315-3-26(c)(1)(iv)(B), that a Part B plan approval application has been submitted to the Division and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Executive Secretary. The notice shall include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the Division, and a mailing address to which information, opinions, and inquiries

may be directed throughout the plan approval review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the plan approval application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under R315-3-38.2(b), the Executive Secretary shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Division's office.

38.3 INFORMATION REPOSITORY

(a) Applicability. The requirements of this section shall apply to all Part B applications seeking initial plan approvals for hazardous waste management units.

(b) The Executive Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Executive Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity of the nearest copy of the administrative record. If the Executive Secretary determines, at any time after submittal of a plan approval application, that there is a need for a repository, then the Executive Secretary shall notify the facility that it shall establish and maintain an information repository. See R315-3-10(m) for similar provisions relating to the information repository during the life of a plan approval.

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Executive Secretary to fulfill the purposes for which the repository is established. The Executive Secretary shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Executive Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Executive Secretary shall specify a more appropriate site.

(e) The Executive Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Executive Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Executive Secretary. The Executive Secretary may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

KEY: hazardous waste
December 15, 1999 **19-6-105**

Notice of Continuation March 12, 1997 **19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-4. Hazardous Waste Manifest.
R315-4-1. Hazardous Waste Manifest Standards.

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.

R315-4-2. The Manifest.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal shall prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions, including the additional information requirements, found in R315-50-1, which incorporates by reference 40 CFR 262, Appendix.

(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 designate on the manifest one 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) If the State to which the shipment is manifested, consignment State, supplies the Manifest and requires its use, then the generator must use that Manifest.

(f) If the consignment State does not supply the Manifest, but the State in which the generator is located, generator State, supplies the Manifest and requires its use, then the generator must use that State's Manifest.

(g) If neither the generator State nor the consignment State supplies the Manifest, then the generator may obtain the Manifest from any source.

(h) 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.

(i) 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 R315-5-5(a).

(j) The generator shall give the transporter the remaining copies of the manifest.

(k)(1) 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. Copies of the manifest are not required for each transporter.

(2) 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:

(i) The next non-rail transporter, if any; or

(ii) The designated facility if transported solely by rail; or

(iii) The last rail transporter to handle the waste in the United States if exported by rail.

(3) The 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.

(l) 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.

(m) 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.

(n) The requirements of R315-4-2 and R315-5-9(d) 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 contigious property is divided by a public or private right-of-way. Notwithstanding R315-6-1(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.

R315-4-3. Transporter Manifest Procedures.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of R315-4-2. In the case of exports other than those subject to R315-5-15, which incorporates by reference 40 CFR 262 Subpart H, a transporter may not accept hazardous waste from a primary exporter or other person:

(1) if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and

(2) unless, in addition to a manifest signed in accordance with the provisions of R315-4-2, the waste is also accompanied by an EPA Acknowledgement of Consent which, except for shipment by rail, is attached to the manifest, or shipping paper for exports by water, bulk shipments. For exports of hazardous waste subject to the requirements of R315-5-15, which incorporates by reference 40 CFR 262 Subpart H, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84, which R315-5-15 incorporates by reference.

(b) Before transporting the hazardous waste, the transporter shall hand sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The

transporter shall return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgement of Consent also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest, shall retain one copy of the manifest in accordance with R315-6-5, and shall give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of R315-4-3(c), (d), and (f) do not apply to water, bulk shipment, transporters if:

(1) The hazardous waste is delivered by water, bulk shipment, to the designated facility; and

(2) A shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generators certification, and signatures, and, for exports, an EPA Acknowledgement of Consent accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water, bulk shipment, transporter obtains the date of delivery and signature of the water, bulk shipment transporter on the manifest and forwards it to the manifested facility; and

(5) A copy of the shipping paper or manifest is retained by each water, bulk shipment, transporter in accordance with R315-6-5.

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply. The following requirements do apply to shipments involving rail transportation:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States.

(iv) Retain one copy of the manifest and rail shipping paper in accordance with R315-6-5.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generator certification, and signatures, and, for exports, an EPA Acknowledgement of Consent accompanies the hazardous waste at all times.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper, if the manifest has not been received by the facility; and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with R315-6-5.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with R315-6-5.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States shall indicate on the manifest the date the hazardous waste left the United States; shall sign the manifest and retain one copy as specified in R315-6-5; and shall return a signed copy of the manifest to the generator, and give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter should not transport hazardous waste not properly labeled or hazardous waste containers which are leaking or appear to be damaged, since those packages become the transporter's responsibility during transport.

(i) The transporter shall deliver the entire quantity of hazardous waste accepted from a generator or a transporter to the approved facility designated as "primary" on the manifest by the generator; or the alternate designated facility, if the hazardous waste cannot be delivered to the facility designated as primary; or the next designated transporter; or the point of departure from the United States, for hazardous wastes designated by the generator to a foreign consignee.

(j) If the hazardous waste cannot be delivered in accordance with R315-4-3(a) through (i), the transporter shall contact the generator for further directions, shall revise all copies of the manifest according to the generator's directions, and shall follow those directions.

(k) If a transporter has a discharge of hazardous waste he shall comply with R315-9 and all other applicable laws and regulations.

(l) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of R315-4-3 or those of R315-6-5 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in R315-4-2(l);

(2) The transporter records, on a log or shipping paper, the following information for each shipment;

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

R315-4-4. Off-Site Hazardous Waste Storage, Treatment or Disposal Facilities Manifest Procedures.

(a) An owner or operator of a facility which receives hazardous waste accompanied by a manifest 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 R315-4-4(c), 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; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the signed and dated shipping paper to the generator; and

(5) Retain at the facility a copy of the manifest and shipping, if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

(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 R315-4-4(c), 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; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the signed and dated 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) Manifest Discrepancies

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are (1) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload, and (2) 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.

(2) 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. The Executive Secretary does not intend that the owner or operator of a facility should perform the appropriate waste analysis before signing the shipping paper or manifest and giving it to the transporter. However, unreconciled discrepancies discovered during later analysis shall be reported.

(d) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the generator requirements of R315-4-2.

(e) 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 must 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 and 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 all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

KEY: hazardous waste

December 15, 1999	**19-6-105**
Notice of Continuation March 12, 1997	**19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-5. Hazardous Waste Generator Requirements.
R315-5-1. 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 this part 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: R315-5-2 for determining whether or not he has a hazardous waste, R315-5-3 for obtaining an EPA identification number, R315-5-10 for accumulation of hazardous waste, R315-5-5(c) and (d) for recordkeeping, R315-5-8 for additional reporting, and if applicable, R315-5-11 for farmers.

(d) Any person who exports or imports hazardous waste as identified in 40 CFR 262.80(a) and is subject to the manifesting requirements of R315-4, 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 R315-5-13 incorporates by reference, for recovery shall comply with R315-5-15, 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 this rule.

(f) A farmer who generates waste pesticides which are hazardous wastes and who complies with all the requirements of R315-5-11 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 plan approval 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 this rule. The provisions of R315-5-10, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of R315-5-10, 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, and R315-13.

R315-5-2. Determination of Whether a Waste is a Hazardous Waste.

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:

(a) Substitute "Board" for all federal regulation references made to "Administrator".

R315-5-3. Identification Numbers.

(a) Prior to offering for transport, transporting, treating, storing, or disposing of a hazardous waste, generators shall obtain an EPA Identification Number. This number will be assigned upon receipt of the generator's hazardous waste notification under Section 3010 of RCRA. Generators who did not notify under Section 3010, e.g., new generators, shall obtain an EPA Identification Number. Information on obtaining this number can be acquired by contacting the Utah Bureau of Solid and Hazardous Waste Management. See R315-9-2 or Emergency Control Variances.

(b) 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.

R315-5-4. Manifest.

Any generator who transports, or offers for transportation, hazardous wastes for off-site treatment, storage, or disposal shall comply with R315-4-1 and R315-4-2 prior to off-site transportation of the waste.

R315-5-5. Recordkeeping.

(a) A generator shall keep a copy of each manifest signed in accordance with R315-4-2(i) 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 R315-5-2, which incorporates by reference 40 CFR 262.11, July 1, 1992, 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.

R315-5-6. 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 R315-5-13.

R315-5-7. 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.

R315-5-8. 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.

R315-5-9. Packaging, Labeling, Marking, and Placarding.

(a) 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.

(b) 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.

(c) 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.

(d) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in 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

Manifest Document Number

(e) 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 Part 172, Subpart F.

R315-5-10. Accumulation Time.

(a) These requirements as found in 40 CFR 262.34, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following addition.

(b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

R315-5-11. 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 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.

R315-5-12. Special Requirements for Generators of Between 100 and 1000 kg/mo.

Of the recordkeeping and reporting requirements found in R315-5-5 through R315-5-8, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements:

(a) Section R315-5-5(a), (c), and (d);

(b) Section R315-5-7(b); and

(c) Section R315-5-8.

R315-5-13. Exports of Hazardous Waste.

The requirements of 40 CFR 262 Subpart E, 262.50 - 262.58, 1996 ed., are adopted and incorporated by reference with the following exceptions:

(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 R315-4, 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 R315-5-13 incorporates by reference, for recovery shall comply with R315-5-15, which incorporates by reference 40 CFR 262 Subpart H. The requirements of Subparts E and F do not apply.

R315-5-14. Imports of Hazardous Waste.

The requirements of 40 CFR 262 Subpart F (262.60), 1990 ed., are adopted and incorporated by reference.

R315-5-15. 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.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-6. Hazardous Waste Transporter Requirements.
R315-6-1. Coverage.

(a) These hazardous waste transporter requirements establish standards which apply only to persons transporting hazardous waste within the State of Utah if the transportation requires a manifest as specified under R315-4 and R315-5.

(b) These rules do not apply to persons that transport hazardous waste on-site if they are either a hazardous waste generator or are owners or operators of an approved hazardous waste management facility.

(c) A transporter shall also comply with R315-4 and R315-5, if he:

(1) Transports hazardous waste from abroad into the State;

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) A transporter of hazardous waste subject to the manifesting requirements of R315-4, or subject to the waste management standards of R315-16, that is being imported from or exported to any of the countries listed in 40 CFR 262.58(a)(1), which R315-5-13 incorporates by reference, for purposes of recovery is subject to R315-6-1, R315-6-2, and R315-6-7 and to all other relevant requirements of R315-5-15, which incorporates by reference 40 CFR 262 Subpart H, including 40 CFR 262.84 for tracking documents.

R315-6-2. Identification Numbers.

Prior to transporting hazardous waste, a transporter shall obtain an EPA Identification Number. This number will be assigned upon receipt of the transporter's notification of hazardous waste activity under Section 3010 of RCRA. Transporters who did not obtain an EPA Identification Number through the notification process shall obtain one. Information on obtaining this number can be acquired by contacting the Utah Bureau of Solid and Hazardous Waste Management.

R315-6-3. Compliance with Department of Transportation Regulations.

Transporters of hazardous waste shall comply with the following pertinent regulations of the U.S. Department of Transportation governing the transportation of hazardous materials for both interstate and intrastate shipments:

(a) 49 CFR 171, General Information Regulations and Definitions;

(b) 49 CFR 172, Hazardous Materials Table and Hazardous Material Communications Regulations;

(c) 49 CFR 173, Shippers - General Requirements for Shipments and Packaging;

(d) 49 CFR 174, Carriage by Rail;

(e) 49 CFR 175, Carriage by Aircraft;

(f) 49 CFR 176, Carriage by Vessel;

(g) 49 CFR 177, Carriage by Public Highway;

(h) 49 CFR 178, Shipping Container Specification; and

(i) 49 CFR 179, Specifications for Tank Cars.

R315-6-4. Manifest.

A transporter shall comply with all pertinent R315-4 manifest requirements prior to accepting hazardous waste for transport.

R315-6-5. Recordkeeping.

(a) A transporter of hazardous waste shall keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For hazardous waste shipments delivered to the designated facility by water, bulk shipment, each water, bulk shipment, transporter shall retain a copy of a shipping paper containing all the information required in R315-4-3(e) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(d) For shipments of hazardous waste by rail:

(i) The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in R315-4-3(f) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(ii) The final rail transporter shall keep a copy of the signed manifest, or the shipping paper if signed by the designated facility in lieu of the manifest, for a period of three years from the date the hazardous waste was accepted by the initial transporter. Intermediate rail transporters are not required to keep records pursuant to these rules.

(e) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Board or its duly appointed representative.

R315-6-6. Emergency Controls.

Transporters shall comply with R315-9 in the event of a discharge of hazardous waste.

R315-6-7. Transfer Facility Requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of R315-5-9 at a transfer facility for a period of ten days or less is not subject to regulation under rules R315-3, R315-7, R315-8, and R315-13 with respect to the storage of those wastes.

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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 and 264.553, 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 applicable portions of R315-3 until either a plan approval 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 plan approval application as required by R315-3-3(b) and (d). 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. R315-7 also applies to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in R315-7-8.1(a).

(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 R315-5-10, except to the extent the requirements are included in R315-5-10;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-11; or

(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 R315-5-9 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.

(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 R315-16-1.7) 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 R315-16-1.6

(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 Bureau of Solid and Hazardous Waste Management.

9.3 REQUIRED NOTICES

(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) 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. The schedule shall be kept at the facility, and shall identify the types of problems, i.e., malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc. The frequency of inspection may vary for the items on the schedule. However, it 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

The rules in this section 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.

12.2 USE OF MANIFEST SYSTEM

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest, as defined in R315-7-12.3, on each copy of the manifest;

The Board does not intend that the owner or operator of a facility whose procedures under R315-7-9.4(c) include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. R315-7-12.3(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(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; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the signed and dated 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.

12.3 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for bulk waste, variations greater than ten percent in weight, and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. 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.

(b) 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 of receipt of the waste, the owner or operator shall immediately submit a letter describing the discrepancy, and attempts to reconcile it, including a copy of the manifest at issue, to the Board.

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;

(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;

(j) The certification signed by the owner or operator of the facility or his authorized representative.

12.7 UNMAINFESTED WASTE REPORT

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 R315-4-3(e)(2) of these rules, and if the waste is not excluded from the manifest requirements by R315-2-2, 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:

(a) The EPA Identification Number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA Identification Number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste the facility received;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

Small quantities of hazardous waste are excluded from regulation under R315-7 and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the owner or operator should obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator should file an unmanifested waste report for the hazardous waste movement.

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 R315-3-3(s), where the Executive Secretary determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of R315-7-13 because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of R315-8-6.12(a).

13.2 Groundwater Monitoring System

(a) A groundwater monitoring system shall be capable of yielding groundwater samples for analysis and shall consist of:

(1) Monitoring wells, at least one, installed hydraulically upgradient, i.e., in the direction of increasing static head from the limit of the waste management area. Their number, locations, and depths shall be sufficient to yield groundwater samples that are:

(i) Representative of background groundwater quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility.

(2) Monitoring wells, at least three, installed hydraulically downgradient, i.e., in the direction of decreasing static head, at the limit of the waste management area. Their number, locations, and depths shall ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

(b) Separate monitoring systems for each waste management component of the facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary perimeter.

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space, i.e., the space between the bore hole and well casing above the sampling depth shall be sealed with a suitable material, e.g., cement grout or bentonite slurry, to prevent contamination of samples and the ground water.

13.3 Sampling and Analysis

(a) The owner or operator shall obtain and analyze samples from the installed groundwater monitoring system. The owner or operator shall develop and follow a groundwater sampling and analysis plan. He shall keep this plan at the facility. The plan shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

See "Procedures Manual for Groundwater Monitoring at Solid Waste Disposal Facilities," EPA-530/SW-611, August

1977 and "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979 for discussions of sampling and analysis procedures.

(b) The owner or operator shall determine the concentration or value of the following parameters in groundwater samples in accordance with R315-7-13.3(c) and (d):

(1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in R315-50-3, which incorporates by reference 40 CFR 265, Appendix III.

(2) Parameters establishing groundwater quality:

(i) Chloride

(ii) Iron

(iii) Manganese

(iv) Phenols

(v) Sodium

(vi) Sulfate

These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under R315-7-13.4(d).

(3) Parameters used as indicators of groundwater contamination:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(c)(1) For all monitoring wells, the owner or operator shall establish initial background concentrations or values of all parameters specified in R315-7-13.3(b). He shall do this quarterly for one year.

(2) For each of the indicator parameters specified in R315-7-13.3(b)(3), at least four replicate measurements shall be obtained for each sample and the initial background arithmetic mean and variance shall be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells shall be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish groundwater quality shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(2) at least annually.

(2) Samples collected to indicate groundwater contamination shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(3) at least semiannually.

(e) Elevation of the groundwater surface at each monitoring well shall be determined each time a sample is obtained.

13.4 Preparation, Evaluation, and Response

(a) The owner or operator shall prepare an outline of a groundwater quality assessment program. The outline shall describe a more comprehensive groundwater monitoring program, than that described in R315-7-13.2 and R315-7-13.3, capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

(b) For each indicator parameter specified in R315-7-13.3(b)(3), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with R315-7-13.3(d)(2) and compare these results with its initial background arithmetic mean. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Students t-test at the 0.01 level of significance, see R315-50-1F(a), to determine statistically significant increases, and decreases, in the case of pH, over initial background.

(c)(1) If the comparisons for the upgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall submit this information in accordance with R315-7-13.5(a)(2)(ii).

(2) If the comparisons for downgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall then immediately obtain additional groundwater samples from those downgradient wells where a significant difference was detected, split the samples in two, and expeditiously obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under R315-7-13.4(c)(2) confirm the significant increase, or pH decrease, the owner or operator shall provide written notice to the Board--within seven days of the date of the confirmation--that the facility may be affecting groundwater quality.

(2) Within 15 days after the notification under R315-7-13.4(d)(1), the owner or operator shall develop and submit to the Board a specific plan, based on the outline required under R315-7-13.4(a) and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

(3) The plan to be submitted under R315-7-13.1(d)(1) or R315-7-13.4(d)(2) shall specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously-gathered groundwater quality information; and

(iv) A schedule of implementation.

(4) The owner or operator shall implement the groundwater quality assessment plan which satisfies the requirements of R315-7-13.4(d)(3), and, at a minimum, determine:

(i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and

(ii) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

(5) The owner or operator shall make his first determination under R315-7-13.4(d)(4) as soon as technically feasible, and, within 15 days after that determination submit to the Board a written report containing an assessment of the groundwater quality.

(6) If the owner or operator determines, based on the

results of the first determination under R315-7-13.4(d)(4), that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in R315-7-13.3 and R315-7-13.4(b). If the owner or operator reinstates the indicator evaluation program, he shall so notify the Board in the report submitted under R315-7-13.4(d)(5).

(7) If the owner or operator determines, based on the first determination under R315-7-13.4(d)(4), that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he:

(i) Must continue to make the determinations required under R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility, if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under R315-7-13.4(d)(4), if the groundwater quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of R315-7-13, any groundwater quality assessment to satisfy the requirements of R315-7-13.4(d)(4) which is initiated prior to final closure of the facility shall be completed and reported in accordance with R315-7-13.4(d)(5).

(f) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), at least annually the owner or operator shall evaluate the data on groundwater surface elevations obtained under R315-7-13.3(e) to determine whether the requirements under R315-7-13.2(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that R315-7-13.2(a) is no longer satisfied, the owner or operator shall immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

13.5 Recordkeeping and Reporting

(a) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses required in R315-7-13.3(c) and (d), the associated groundwater surface elevations required in R315-7-13.3(e), and the evaluations required in R315-7-13.4(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following groundwater monitoring information to the Board:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in R315-7-13.3(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in 40 CFR 265, Appendix III.

(ii) Annually: concentrations or values of the parameters listed in R315-7-13.3(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under R315-7-13.4(b). The owner or operator shall separately identify any significant differences from initial background found in the upgradient wells, in accordance with R315-7-13.4(c)(1). During the active life of the facility, this information shall be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: results of the evaluation of groundwater surface elevations under R315-7-13.4(f), and a description of the response to that evaluation, where applicable.

(b) If the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of R315-7-13.4(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Board a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report shall be submitted no later than March 1, following each calendar year.

R315-7-14. Closure and Post-Closure.

The requirements as found in 40 CFR 265 Subpart G (265.110 - 265.121), 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 "Board" for all references to "Administrator" or "Regional Administrator."

(b) Substitute "Board" for "Agency" or "EPA".

(c) Substitute 19-6 for references to Sections of RCRA.

R315-7-16. 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 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) 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 plan approvals; 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 plan approval 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:

(1) 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

(2) 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

(a) 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:

(1) 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

(2) 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 and 144.3;

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with plan approvals; 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 this part;

(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, CO_2 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 R315-5-21.10. 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) 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 this Subpart 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 this Subpart 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, 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".

R315-7-28. 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

December 15, 1999 **19-6-105**

Notice of Continuation March 12, 1997 **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 does apply 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 R315-3-1.

(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 R315-5-10;

(3) A farmer disposing of waste pesticides from his own use in compliance with R315-5-11;

(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 R315-5-9 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;

(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.

(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 must 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, and R315-14-6, which incorporates by reference 40 CFR 266 Subpart G.

(10) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7), 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 R315-16-1.6.

(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.

1.2 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 R315-3-33 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his plan approval 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 apply for an EPA Identification Number. 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 Bureau of Solid and Hazardous Waste Management.

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 R315-5-15, 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) 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 plan approval(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 Plan Approval 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, it 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 this Part, 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 plan approval application are specified in R315-3 specifically in R315-3-5. 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 plan approval 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 must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program must 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) must 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 must 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 must 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 must 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 must 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 R315-3-10(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification must 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 Plan Approval 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 Plan Approval 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 plan approval application under R315-3 and after modification or approval will become a condition of any plan approval 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 plan approval;

(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

The rules in this section 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.

R315-8-5.3, incorporates by reference 40 CFR 264.73, July 1, 1992. However, 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where the wastes were generated.

5.2 USE OF MANIFEST SYSTEM

An owner or operator, or his agent, of a facility that receives hazardous waste accompanied by a manifest shall comply with section R315-4-4. 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.

5.3 OPERATING RECORD

The requirements as found in 40 CFR 264.73, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

5.4 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload, and (2) 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.

(b) 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. The Executive Secretary 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, include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. However, unreconciled discrepancies discovered during later analysis shall be reported.

5.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) Records of waste disposal locations and quantities required to be maintained under R315-5-6.3(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

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest as described in R315-4-3(e)(2), except for shipments that do not require a manifest because of the exclusions in R315-2, the owner or operator shall prepare and submit a single copy of a report to the Board within 15 days of the receipt of the waste. The report shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date of receipt of the waste;

(c) The word "unmanifested" under the comments section, or check appropriate box of the report form;

(d) The EPA identification number, name, and address of the generator and the transporter, if available;

(e) A description and the quantity of each unmanifested hazardous waste received by the facility;

(f) The method(s) of treatment, storage, or disposal for each hazardous waste;

(g) A certification signed by the owner or operator of the facility or his authorized representative; and

(h) A brief explanation of why the shipment was unmanifested, in the comments section of the report form. If a facility owner or operator accepts unmanifested hazardous waste, believing it to be excluded under R315-2, he should obtain from the generator a certification that the waste qualifies for exclusion, otherwise he should file an unmanifested waste report for the hazardous waste movement.

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 must satisfy the requirements identified in R315-8-6.1(a)(2) for all wastes, or constituents thereof, contained in solid waste management units at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in R315-8-6.12. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982, hereinafter referred to as a "regulated unit", must comply with the requirements of R315-8-6.2 through R315-8-6.11 in lieu of R315-8-6.12 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of R315-8-6.12 apply to regulated units.

(3) Groundwater monitoring shall be required at non-land disposal facilities as determined to be necessary and appropriate by the Executive Secretary.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under R315-8-6 if:

(1) The owner or operator is exempted under R315-8-1(e) or

(2) He operates a unit which the Board finds:

(i) Is an engineered structure.

(ii) Does not receive or contain liquid waste or waste containing free liquid.

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off.

(iv) Has both inner and outer layers of containment

enclosing the waste.

(v) Has a leak detection system built into each containment layer.

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Board finds pursuant to R315-8-13.11(d) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of R315-8-13.9 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Board finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit, including the closure period and the post-closure care period specified under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a waste pile in compliance with R315-8-12.1(c).

(c) The regulations under this section apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in this section:

(1) Do not apply if the waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264-120, if the owner or operator is conducting a detection monitoring program under R315-8-6.9;

(3) Apply during the compliance period under R315-8-6.7 the owner is conducting a compliance monitoring program under R315-8-6.10 or a corrective action program under R315-8-6.11.

(d) Requirements in this Section may apply to miscellaneous units when necessary to comply with R315-8-24, which incorporates by reference 40 CFR 264.601 - 264.603.

(e) The regulations of R315-8-6 apply to all owners and operators subject to the requirements of R315-3-3(s), when the Executive Secretary issues either a post-closure permit or an enforceable document, as defined in R315-3-3(s), at the facility. When the Executive Secretary issues an enforceable document, references in R315-8-6 to "in the plan approval" mean "in the enforceable document."

(f) The Executive Secretary may replace all or part of the requirements of R315-8-6.2 through R315-8-6.11 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the plan approval, or in an enforceable document, as defined in R315-3-3(s) where the Executive Secretary determines that:

(1) The regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of R315-8-6.2 through R315-8-6.11 because alternative requirements will protect human health and the environment.

6.2 REQUIRED PROGRAMS

(a) Owners and operators subject to this section shall conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under R315-8-6.4, from a regulated unit are detected at the compliance point under R315-8-6.6, the owner or operator shall institute a compliance monitoring program under R315-8-6.10. Detected is defined as statistically significant evidence of contamination as described in R315-8-6.9(f);

(2) Whenever the groundwater protection standard under R315-8-6.3, is exceeded, the owner or operator shall institute a corrective action program under R315-8-6.11. "Exceeded" is defined as statistically significant evidence of increased contamination as described in R315-8-6.10(d);

(3) Whenever hazardous constituents under R315-8-6.4, from a regulated unit exceed concentration limits under R315-8-6.5 in groundwater between the compliance point under R315-8-6.6 and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under R315-8-6.11; or

(4) In all other cases, the owner or operator shall institute a detection monitoring program under R315-8-6.9.

(b) The Executive Secretary will specify in the facility plan approval the specific elements of the monitoring and response program. The Executive Secretary may include one or more of the programs identified in R315-8-6.2(a) in the facility plan approval as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Executive Secretary will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a plan approval modification application to incorporate this type of a program could be taken.

6.3 GROUNDWATER PROTECTION STANDARD

The owner or operator shall comply with conditions specified in the facility plan approval that are designed to ensure that hazardous constituents under R315-8-6.4 that are detected in the groundwater from a regulated unit do not exceed the concentration limits under R315-8-6.5 in the uppermost aquifer 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 plan approval when hazardous constituents have been detected in the groundwater.

6.4 HAZARDOUS CONSTITUENTS

(a) The Executive Secretary will specify in the facility plan approval the hazardous constituents to which the groundwater protection standard of R315-8-6.3 applies. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, that have been detected in groundwater in the uppermost aquifer 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 plan approval if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Executive Secretary will consider the following:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.4(b) about the use of groundwater in the area around the facility, the Executive Secretary will consider any identification of underground sources of drinking water.

6.5 CONCENTRATION LIMITS

(a) The Executive Secretary will specify in the facility plan approval concentration limits in the groundwater for hazardous constituents established under R315-8-6.4. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the groundwater at the time that limit is specified in the plan approval; or

(2) For any of the constituents listed in Table 1, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

TABLE 1
Maximum Concentration of Constituents for Groundwater Protection

CONSTITUENT		MAXIMUM CONCENTRATION(1)
Arsenic		0.05
Barium		1.0
Cadmium		0.01
Chromium		0.05
Lead		0.05
Mercury		0.002
Selenium		0.01
Silver		0.05
Endrin	(1,2,3,4,10,10-hexachloro-1, 7-epoxy-1,4,4a,5,6,7,8, 9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane	(1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor	(1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene	(C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D	(2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex	(2,4,5-Trichlorophenoxypropionic acid)	0.01

(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 plan approval the point of compliance at which the groundwater protection standard of R315-8-6.3 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer 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 plan approval the compliance period during which the groundwater protection standard of R315-8-6.3 applies. The compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to plan approval and the closure period.

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of R315-8-6.9.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in R315-8-6.7(a), the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

6.8 GENERAL GROUNDWATER MONITORING REQUIREMENTS

The owner or operator shall comply with the following requirements for any groundwater monitoring program developed to satisfy R315-8-6.9, R315-8-6.10, or R315-8-6.11:

(a) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background water that has not been affected by leakage from a regulated unit;

(i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(2) represent the quality of groundwater passing the point of compliance; and

(3) allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in

the uppermost aquifer.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the bore hole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(d) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(e) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the plan approval will be collected from background wells and wells at the compliance point. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size should be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility plan approval which shall be specified in the unit plan approval upon approval by the Executive Secretary. This sampling procedure should be:

(1) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(2) an alternate sampling procedure proposed by the owner or operator and approved by the Executive Secretary.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent, upon approval by the Executive Secretary, will be specified in the unit plan approval. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits, pql's, are used in any of the following statistical procedures to comply with R315-8-6.8(i)(5), the pql shall be proposed by the owner or operator and approved by the Executive Secretary. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in R315-8-6.8(i).

(1) a parametric analysis of variance, ANOVA, followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) an analysis of variance, ANOVA, based on ranks followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between compliance well's median and the background median levels for each constituent;

(3) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(4) a control chart approach that gives control limits for each constituent;

(5) another statistical test method submitted by the owner or operator and approved by the Executive Secretary.

(i) Any statistical method chosen under R315-8-6.8(h) for specification in the unit plan approval shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, predictions intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Executive Secretary if he finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Executive Secretary if he finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values

for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit, pql, approved by the Executive Secretary under R315-8-6.8(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with R315-8-6.8(g) including actual levels of constituents shall be maintained in the facility operating record. The Executive Secretary will specify in the plan approval when the data shall be submitted for review.

6.9 DETECTION MONITORING PROGRAM

An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor for indicator parameters, e.g., specific conductance, pH, total organic carbon, or total organic halogen, waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Executive Secretary will specify the parameters or constituents to be monitored in the facility plan approval after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b), and (c).

(c) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the plan approval pursuant to R315-8-6.9(a) in accordance with R315-8-6.9(g). The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under R315-8-6.8(h).

(d) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the plan approval under R315-8-6.9(a) in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semiannually during detection monitoring.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the plan approval pursuant to R315-8-6.9(a) at a frequency specified under R315-8-6.9(d).

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method specified in the plan approval under R315-8-6.8(h). This method shall compare data collected at the compliance point to the background groundwater quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The Executive Secretary will specify in the facility plan approval what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to R315-8-6.9(f) that there is statistically significant evidence of contamination for chemical parameters of hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he shall:

(1) notify the Executive Secretary of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, are present, and if so, in what concentration;

(3) for any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, compounds found in the analysis pursuant to R315-8-6.9(g)(2), the owner or operator may resample within one month and repeat the analysis for these compounds detected. If the results for the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to R315-8-6.9(g)(2), the hazardous constituents found during this initial R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis will form the basis for compliance monitoring;

(4) within 90 days, submit to the Executive Secretary an application for a plan approval modification to establish a compliance monitoring program meeting the requirements of R315-8-6.10. The application must include the following information;

(i) an identification of the concentration of any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of R315-8-6.10;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the

requirements of R315-8-6.10;

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under R315-8-6.10(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under R315-8-6.5(b); and

(5) within 180 days, submit to the Executive Secretary:

(i) all data necessary to justify an alternate concentration limit sought under R315-8-6.5(b); and

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirement of R315-8-6.11, unless:

(A) all hazardous constituents identified under R315-8-6.9(g)(2) are listed in R315-8-6.5, Table 1 and their concentrations do not exceed their respective values given in that table; or

(B) the owner or operator has sought an alternate concentration limit under R315-8-6.5(b) for every hazardous constituent identified under R315-8-6.9(g)(2).

(6) If the owner or operator determines, pursuant to R315-8-6.9(f), that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under R315-8-6.9(g)(6) in addition to, or in lieu of, submitting a plan approval modification application under R315-8-6.9(g)(4); however, the owner or operator is not relieved of the requirement to submit a plan approval modification application within the time specified in R315-8-6.9(g)(4) unless the demonstration made under R315-8-6.9(g)(6) successfully shows that a source other than the regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under R315-8-6.9(g)(6), the owner or operator shall:

(i) notify the Executive Secretary in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the Executive Secretary an application for a plan approval modification to make any appropriate changes to the detection monitoring program facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under R315-8-6.9.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he shall, within 90 days, submit an application for a plan approval modification to make any appropriate changes to the program.

6.10 COMPLIANCE MONITORING PROGRAM

An owner or operator required to establish a compliance monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility plan approval including:

(1) A list of the hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6;

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b) and (c).

(c) The Executive Secretary will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with R315-8-6.8(g) and (h).

(1) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous waste constituent in accordance with R315-8-6.8(g).

(2) The owner or operator shall record groundwater analytical data as measured and in form necessary for the determination of statistical significance under R315-8-6.8(h) for the compliance period of the facility.

(d) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the plan approval, pursuant to R315-8-6.10(a), at a frequency specified under R315-8-6.10(f).

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method specified in the plan approval under R315-8-6.5. The method shall compare data collected at the compliance point to a concentration limit developed in accordance with R315-8-6.8(h).

(2) The owner or operator shall determine whether there is statistically significant evidence of increase contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility plan approval, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semi-annually during the compliance period of the facility.

(g) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents

contained in R315-50-14, which incorporates by reference 40 CFR, Appendix IX, at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in R315-8-6.9(f). If the owner or operator finds R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituents in the groundwater that are not already identified in the plan approval as monitoring constituents, the owner or operator may resample within one month and repeat the R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Executive Secretary within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the Executive Secretary within seven days after completion of the initial analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to R315-8-6.10(d) that any concentration limits under R315-8-6.5 are being exceeded at any monitoring well at the point of compliance he shall:

(1) Notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate which concentration limits have been exceeded;

(2) Submit to the Executive Secretary an application for a plan approval modification to establish a corrective action program meeting the requirements of R315-8-6.11, within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Executive Secretary under R315-8-6.9(h)(5). The application shall at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the plan approval under R315-8-6.10(a); and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. The groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to R315-8-6.10(d), that the groundwater concentration limits under R315-8-6.10 are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under R315-8-6.10(i), the owner or operator shall:

(1) Notify the Executive Secretary in writing within seven days that he intends to make a demonstration under R315-8-6.10(i);

(2) Within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a plan approval modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a plan approval modification to make any appropriate changes to the program.

6.11 CORRECTIVE ACTION PROGRAM

An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility plan approval, including:

(1) A list of hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6; and

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan approval will specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Executive Secretary will specify that time period in the facility plan approval. If a facility plan approval includes a corrective action program in addition to a compliance monitoring program, the plan approval will specify when the corrective action will begin and the requirement will operate in lieu of R315-8-6.10(i)(2).

(d) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. The monitoring program may be based on the requirements for a compliance monitoring program under R315-8-6.10 and shall be as effective as that program in determining compliance with the groundwater protection standard under R315-8-6.3 and in determining the success of a corrective action program under R315-8-6.11(e), where appropriate.

(e) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under R315-8-6.4 that exceed concentration limits under R315-8-6.5 in groundwater:

(1) between the compliance point under R315-8-6.6 and the downgradient facility property boundary; and

(2) beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive

Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis.

(3) Corrective action measures under R315-8-6.11(e) shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under R315-8-6.4 is reduced to levels below their respective concentration limits under R315-8-6.5.

(f) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area, including the closure period if he can demonstrate, based on data from the groundwater monitoring program under R315-8-6.11(d), that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

(g) The owner or operator shall report in writing to the Executive Secretary on the effectiveness of the corrective action program. The owner or operator shall submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a plan approval modification to the program.

6.12 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

(a) The owner or operator of a facility seeking a plan approval for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the plan approval in accordance with R315-8-6-12 and R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553. The plan approval will contain schedules of compliance for the corrective action, where such corrective action cannot be completed prior to issuance of the plan approval, and assurances of financial responsibility for completing the corrective action.

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis. Assurances of financial responsibility for corrective action must be provided.

R315-8-7. Closure and Post Closure.

The requirements as found in 40 CFR Subpart G, 264.110 - 264.120, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(1) Substitute "Board" for all federal regulation references made to "Regional Administrator" except in 264.112 where "Regional Administrator" and "Director" means "Executive Secretary".

(2) Substitute R315-3 for all general reference made to 40 CFR 124 and 270.

(3) Substitute "plan approval" for all federal references made to "permit".

(4) Substitute 19-6-101 et seq. for all references made to RCRA.

R315-8-8. Financial Requirements.

The requirements as found in 40 CFR Subpart H, 264.140 - 264.151, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(1) Substitute "Board" for all references to "Regional Administrator".

(2) Substitute 19-6 for all references to RCRA.

R315-8-9. 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 must 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 must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988 for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265-193(a)(5), "or December 16, 1988 for non-HSWA tank systems."

R315-8-11. 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 R315-8-1.1.

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 R315-8-11.9(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 must 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 must 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 must 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 must 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 must 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 must 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 must 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 x $10/^{-1}$/cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3 x $10/^{-4}/m^2$sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must 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 must 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 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 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 plan approval; 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 plan approval 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 plan approval 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) must 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 must 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 must 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 must 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 must 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 must 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 plan approval.

(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 plan approval 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 R315-8-1.1.

(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 plan approval 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 plan approval 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 plan approval 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 R315-8-1.1.

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 plan approval 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 plan approval the hazardous constituents that must 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 plan approval. 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 plan approval under R315-3-21. 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 plan approval 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 plan approval 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 must 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 to 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 plan approval 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 plan approval 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 plan approval 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 plan approval 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 plan approval 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 R315-8-1.1 provides otherwise.

14.2 DESIGN AND OPERATING REQUIREMENTS

(a) Any landfill that is not covered by paragraph R315-8-14.2(h) or R315-8-14.2(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 plan approval 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 plan approval; 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 plan approval 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 plan approval, 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 this part;

(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 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.

(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 must 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, CO2 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 must 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 must 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 Subsection 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 exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator 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 Regional Administrator 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 R315-8-1.1 provides otherwise.

(b) After consideration of the waste analysis included with Part B of the plan approval, the Executive Secretary, in establishing the plan approval conditions, shall exempt the applicant from all requirements of this section except R315-8-15.2, Waste Analysis and R315-8-15.12 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.

(c) If the waste to be burned is one which is described by R315-8-15.1(b)(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 plan approval conditions, exempt the applicant from all requirements of this section except R315-8-15.2, Waste analysis and R315-8-15.12, Closure, after consideration of the waste analysis included with Part B of the plan approval, unless the Executive Secretary finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(d) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-20.

15.2 Waste Analysis

(a) As a portion of the trial burn plan required by R315-3-20 or with Part B of the plan approval the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by R315-3-20(b) or R315-3-6(a)(5). Owners or operators of new hazardous waste incinerators shall provide the information required by R315-3-12(c) or R315-3-6(a)(5) 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 plan approval, 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 plan approval, 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 facility's plan approval. 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 R315-3-20 for obtaining trial burn plan approvals.

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 plan approval 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 Part 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 plan approval.

(c) For purposes of plan approval enforcement, compliance with the operating requirements specified in the plan approval under R315-8-15.6 will be regarded as compliance with this section. However, evidence that compliance with those plan approval conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a plan approval under R315-3-15.

(d) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 must 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 plan approval. 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 Plan Approvals

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his plan approval and only under operating conditions specified for those wastes under 8.15.6., except:

(1) In approved trial burns, R315-3-20, 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 plan approval or a plan approval 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 plan approval under R315-3-6.

(c) The plan approval 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 plan approval 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 plan approval, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in R315-3-6(a)(5)(ii), 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 plan approval. 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 plan approval 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 plan approval 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 plan.

(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 plan approval 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 plan approval.

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 plan 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 plan 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 Subpart X Sections 264.600 through 264.603, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "plan approval(s)" for "permit(s)."

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, 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".

R315-8-19. Drip Pads.

The requirements as found in 40 CFR Subpart W Sections 264.570 through 264.575, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all

non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

R315-8-20. 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 Subpart S Sections 264.552 and 264.553, as found in 58 FR 8658, February 16, 1993, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator".

R315-8-22. 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

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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, are adopted and incorporated by reference including Appendices 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) Substitute the words "plan approval" for all federal references made to "permit".

(c) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(d) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

(e) The universal wastes listed at 40 CFR 268.1(f) are exempted from the requirements under 40 CFR 268.7 and 268.50, including mercury-containing wastes, as described in R315-16-1.6.

KEY: hazardous waste
December 15, 1999 19-6-106
Notice of Continuation November 4, 1996 19-6-105

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, 1994 ed., as amended by 59 FR 43496, August 24, 1994 and 59 FR 47982, September 19, 1994, are adopted and incorporated by reference.

R315-14-3. Hazardous Waste Burned for Energy Recovery.

RESERVED

R315-14-4. Used Oil Burned for Energy Recovery.

See Rule R315-15.

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, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference.

KEY: hazardous waste
December 15, 1999 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-50. Appendices.
R315-50-1. Instructions for Completion of Uniform Hazardous Waste Manifest.

The requirements of the Appendix to Part 262 of 40 CFR, Uniform Hazardous Waste Manifest, 1990 ed., are adopted and incorporated by reference with the following additional requirements:

(a) Generators and owners and operators shall complete the following additional items of the manifest form:

(1) Item D. Transporter's phone

Enter the phone number of the first transporter who will transport the waste.

(2) Item F. Transporter's phone

If applicable, enter the phone number of the second transporter who will transport the waste.

(3) Item H. Facility's phone

Enter the phone number of the facility designated to receive the waste listed on the manifest.

(4) Item I. Waste number

Enter the 4-digit EPA Hazardous Waste number assigned to the waste. If the waste is a mixture, include all EPA Hazardous Waste numbers for the wastes known to be present, regardless of the quantity of each individual waste component.

(5) Item J. Additional Descriptions for Materials Listed Above

If the DOT shipping description in item 11, a, b, c, d, of the manifest form contains only NOS or other general term, the hazardous waste constituent(s) must be provided here for each. The specific gravity is assumed to be one (1.00) unless otherwise indicated here.

(6) Item O. Transporter's phone

Refer to Item D

(7) Item Q. Transporter's phone

Refer to Item F

(8) Item R. Waste number

Refer to Item I

(9) Item S. Additional Descriptions for Materials Listed Above

Refer to Item J

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, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference, with the following additions, excluding the constituents for which K064, K065, K066, K090, K091, and K160 are listed:

1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-50-10. Hazardous Constituents.

The requirements of 40 CFR 261, Appendix VIII, 1997 ed., as amended by 63 FR 24596, May 4, 1998, 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, 1998 ed., as amended by 63 FR 42110, August 6, 1998, 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
December 15, 1999 **19-6-106**
Notice of Continuation March 12, 1997 **19-6-108**
19-6-105

R315. Environmental Quality, Solid and Hazardous Waste.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) Class I, II, IV, and V Landfills;

(b) Class III Landfills, except as specified by Subsection R315-304-1(3);

(c) energy recovery and incinerator facilities that are regulated by Rule R315-306;

(d) landtreatment disposal facilities that are regulated by Rule R315-307; and

(e) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The permit requirements of Rule R315-310 apply to each existing solid waste facility, for which a permit is required.

(a) The Executive Secretary may incorporate a compliance schedule for each existing facility to ensure that each existing facility meet the requirements of Rule R315-310.

(b) Each new disposal facility or lateral expansion at an existing disposal facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310; and

(ii) not begin construction of the facility, lateral expansion, or unit until a permit has been granted.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Executive Secretary to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Executive Secretary. Two copies of the application, signed by the owner or operator and received by the Executive Secretary are required before permit review can begin.

(3) Applications for a permit must be completed in the form required by the Executive Secretary.

(4) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(5) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(6) The owner or operator of a facility shall apply for renewal of the facility's permit every five years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class II, IIIb, and IVb Landfills and waste tire storage facilities, unless required by the Executive Secretary, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Executive Secretary of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality; and

(j) a financial assurance plan as set forth in Rule R315-309.

(2) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The Executive Secretary will require and review the information set forth in Subsections 19-6-108(9) and 19-6-108(10) as part of the permitting process.

(b) Subsection 19-6-108(3)(c) requires that after receiving a permit from the Executive Secretary, commercial solid waste disposal facilities must be approved by the local government, the governor, and the Legislature.

(c) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a) and (b).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, and V Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, and V Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where

the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring that meet the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meet the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, and V Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, and V Landfill shall contain a post-closure plan to address:

(i) site monitoring of landfill gas, ground water, and surface water;

(ii) changes to record of title, land use, and zoning restrictions;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism; and

(v) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanded Class IV Landfill.

(1) Each application for a Class IV Landfill permit shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the proposed facility's zoning status;

(e) the area to be served by the facility; and

(f) how the facility will meet the requirements of Rule R315-305.

(3) Each application for a Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample

and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title, land use, and zoning restrictions;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Energy Recovery or Incinerator Facility.

(1) Each application for a new or expanding energy recovery or incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the zoning status of the proposed facility;

(ii) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(iii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule and closure cost;

(ii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iii) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-310-3(1)(a), (b), and (c), and Subsection R315-314-3(3).

R315-310-9. Contents of a Permit Application for an Existing Facility or a Permit Renewal.

The owner or operator of each existing facility shall apply for a permit or renewal of their permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Previous information submitted to the Executive Secretary may be referred to in the application. Changes in operating methods or other changes must be noted in the application in order to be authorized by permit.

R315-310-10. Permit Transfer.

(1) A permit may not be transferred without approval from the Executive Secretary, nor shall a permit be transferred from one property to another.

(2) Application for transfer of a permit shall be made at least 60 days prior to the change of permittee.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the operator has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit for the operation of the facility.

(4) An application for permit transfer may be denied if the Executive Secretary finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Executive Secretary;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

KEY: solid waste management, waste disposal
December 6, 1999 **19-6-105**
Notice of Continuation April 20, 1998 **19-6-108**
19-6-109
40 CFR 258

R402. Health, Community and Family Health Services, Health Education Services.
R402-5. Birth Defects Reporting.
R402-5-1. Purpose and Authority.

This rule establishes reporting requirements for birth defects for births in Utah and for birth-defect related test results. Sections 26-1-30(2)(c), (d), (e), (g), (p), (t), 26-10-1(2), and 26-10-2 authorize this rule.

R402-5-2. Definitions.

As used in this rule:

(1) "Cytogenetics laboratory" means a laboratory in Utah that conducts genetic analysis of samples taken from humans.

(2) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(3) "Birth defect" means a congenital anomaly listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with a diagnostic code from 740.0 to 759.9 or in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with a diagnostic code from Q00-Q99.

(4) "Fetal death" means the delivery of a dead fetus that is of 20 weeks or more gestation, calculated from the date the last menstrual period began to the date of delivery.

(5) "Hospital" means general acute hospital, children's speciality hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(6) "Infant" means an individual under 12 months of age.

R402-5-3. Reporting by Hospitals and Birthing Centers.

The hospital or birthing center where there is a live birth with a birth defect, a fetal death with a birth defect, or admission of an infant with a birth defect shall report or cause to report to the department within 40 days following the birth, fetal death, or admission of the infant the following:

(1) infant's name;
(2) infant's date of birth;
(3) mother's name;
(4) mother's date of birth;
(5) delivery hospital;
(6) birth defects diagnoses; and
(7) mother's state of residency at delivery.

R402-5-4. Reporting by Cytogenetic Laboratories.

A cytogenetic laboratory operating in the state that identifies a human chromosomal or genetic abnormality shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, infant's name and date of birth;
(2) mother's name;
(3) mother's date of birth;
(4) date the sample is accepted by the laboratory;
(5) test conducted;
(6) test result; and
(7) mother's state of residency at delivery.

R402-5-5. Record Abstraction.

Hospitals and birthing centers required to report pursuant to this rule shall allow personnel from the department or its contractors to abstract information from the mother's and infant's files on their demographic characteristics, family history of birth defects, and outcomes of that and other pregnancies by that mother.

R402-5-6. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R402-5-7. Penalties.

As required by Section 63-46a-3(5): Any hospital, birthing center, or cytogenetic laboratory 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: birth defects, birth defect reporting
November 22, 1999 **26-1-30(2)(c), (d), (e), (g), (p), (t)**
26-10-1(2)
26-10-2
26-25-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-7A. Medicaid Certification of New Nursing Facilities.

R414-7A-1. Introduction and Authority.

(1) The purpose of this rule is to control the supply of Medicaid nursing facility programs. The oversupply of nursing facility programs in the state has adversely affected the Utah Medicaid program and the health of the people within the state. This rule continues the prohibition against certification of new nursing facility programs that has been in place since January 13, 1989. This rule clarifies that prohibition and sets up policy to deal with the possible future need for additional Medicaid nursing facility programs in a service area. The July 1990 Report of the Governor's Task Force on Long Term Care recommended continuation of this prohibition. The Task Force concluded that "Market entry into the nursing home industry should be regulated to allow supply to come more in line with demand". This rule also supports the policy of the department to direct new resources into community based alternatives.

(2) Authority for this rule is found in Sections 26-18-2.3, 26-1-5, 26-1-30(2)(a), (b), and (w), and 26-18-3.

R414-7A-2. Definitions.

For purposes of this rule the definitions in R414-1-1 apply. In addition:

(1) "Certified program" means a nursing facility program with Medicaid certification.

(2) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing facility program shown by a valid federal Health Care Financing Administration (HCFA) Form 1539 (7-84).

(3) "Nursing facility" means any Medicaid participating NF, SNF, ICF, ICF/MR, or a combination thereof, as defined in 42 USC 1396r(a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(4) "Nursing facility program" means the personnel, licenses, services, contracts, and all other requirements that must be present for a nursing facility to be eligible for Medicaid certification as detailed in 42 CFR 442.1 through .119, 483.1 through .480, and 488.1 through .64 (1993), which are adopted and incorporated by reference.

(5) "Physical facility" means the building(s) or other physical structure(s) where a nursing facility program is operated.

(6) "Service area" means the boundaries of the distinct geographical area served by a type of certified program, the department to determine the exact area, based on fostering price competition and maintaining economy and efficiency in the Medicaid program.

R414-7A-3. Prohibition Against Medicaid Certification of Nursing Facility Programs.

The department finds that it is in the best interests of the state to prohibit Medicaid certification of nursing facility programs, except as authorized by this rule.

(1) Medicaid reimbursement of nursing facility programs is limited to certified programs as of January 13, 1989.

(2) The department shall not process initial applications for Medicaid certification or execute initial provider agreements with nursing facility programs, except as authorized by R414-7A-4 or R414-7A-5.

(3) The department shall not reinstate Medicaid certification for a previously certified provider whose Medicaid certification expires, or is terminated by action of the federal or state government, except as authorized by R414-7A-4 or R414-7A-5.

(4) The department shall not execute a Medicaid provider agreement with a certified program that moves its nursing facility program to a different physical facility, except as authorized by R414-7A-4 or R414-7A-5.

R414-7A-4. Authorization to Renew, Assign, or Transfer Medicaid Certification.

(1) The department may renew Medicaid certification of a certified program if the program, without any lapse in service to Medicaid recipients, has its nursing facility program certified by the department at the same physical facility.

(2) The department may certify a new nursing facility program if a certified program transfers all of its right to Medicaid certification to the new nursing facility program, and the new program meets all of the following conditions:

(a) The new nursing facility program operates at the same physical facility as the previous certified program.

(b) The new nursing facility program complies with 42 CFR 442.14 (1993).

(c) The new nursing facility program receives Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient.

(3) The department may certify a previously certified program that moves to a different physical facility and meets all of the following conditions:

(a) On the last day that the certified program provided medical assistance to a Medicaid recipient in the original physical facility, it meets all applicable requirements to be a certified program.

(b) The different physical facility is in the same service area.

(c) The time between which the certified program ceases to operate in the original physical facility and begins to operate in the different physical facility is not more than three years.

(d) The provider operating the certified program gives written assurances satisfactory to the executive director or his designee that:

(i) no third party has a legitimate claim to operate a certified program at the previous physical facility;

(ii) the certified program agrees to defend and indemnify the department against any claims made by third parties who may assert a right to operate a certified program at the previous physical facility; and

(iii) if a third party is found, by a final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the original physical facility, the certified program shall voluntarily comply with R414-7A-4(4).

(4) Upon a finding being made as set forth in R414-7A-4(3)(d)(iii), the certified program shall immediately surrender its Medicaid certification, cease billing Medicaid for all services to

Medicaid recipients, and arrange for the orderly discharge of Medicaid recipients to a facility satisfactory to the department. If the third party found to be entitled to operate a certified program at the original physical facility requests Medicaid certification, and the previously certified program has surrendered its Medicaid certification, the department shall treat the request as a transfer of all its rights under R414-7A-4(2).

R414-7A-5. Certification of Additional Nursing Facility Programs.

The department may certify additional nursing facility programs if the executive director or his designee determines that there is insufficient capacity at certified programs in a service area to meet the public need.

(1) The department may certify an additional nursing facility program only if:

(a) after 30-day notice to the Department of Human Services of the department's finding that there is insufficient capacity at certified programs in a service area to meet the public need, the Department of Human Services cannot demonstrate that community-based services can meet the public need; and

(b) after the close of the 30-day notice to the Department of Human Services and a separate 30-day notice to all certified programs operating in the service area, the certified programs operating in the service area cannot demonstrate that they have tangible plans to add additional capacity to their nursing facility programs to meet the public need.

(2) If community-based services and existing certified programs operating in the service area cannot demonstrate that they can meet the public need, the department may select an additional nursing facility program through a request-for-proposal process.

(a) Each proposal must include sufficient information to allow the department to evaluate and rank it among all proposals according to the criteria in R414-7A-5(2)(b), as well as other information that the department solicits in its request-for-proposals. The department shall reject all proposals that offer to operate for a reimbursement rate higher than that paid to similar certified programs.

(b) The department shall evaluate and select from among the proposals based on maintaining price competition, economy, and efficiency in the Medicaid program; the ability of the proposed nursing facility program to deliver quality care; and how quickly the proposed nursing facility program can begin to operate.

(3) If a nursing facility program that the department selected under the request-for-proposal process fails to undertake the necessary steps to become Medicaid certified or fails to begin to provide medical assistance to Medicaid recipients as represented in its proposal, the department may reject that nursing facility program, and either select the next ranked nursing facility program or solicit new proposals without again complying with the requirements of R414-7A-5(1).

(4) If, after certifying an additional nursing facility program, the executive director or his designee determines that there is sufficient capacity at certified programs in a service area to meet the public need, the limitations set out in R414-7A-5(1) through (3) control the certification of nursing facility programs.

KEY: medicaid

July 30, 1995	**26-1-5**
Notice of Continuation December 20, 1999	**26-18-1**
	26-18-2.3
	26-1-30(2)(a), (b), (w)
	26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-7B. Nurse Aide Training and Competency Evaluation Program.

R414-7B-0. Authority and Purpose.

A. Authority

The nurse aide training and competency evaluation program is authorized by the Omnibus Budget Reconciliation Act (OBRA) of 1987, P.L. 100-203, Section 4211(b)(5)(A-G),(e)(2)(1-2),(f)(2)(A-B), which is hereby adopted and incorporated by reference.

B. The purpose of the nurse aide training and competency evaluation program is to provide quality services to residents of nursing facilities by nurse aides who are able to assist residents in maintaining independence, demonstrate sensitivity to residents' needs, and demonstrate observational and documenting skills that are needed in the assessment of residents' health, physical condition, and well-being.

R414-7B-1. Definitions as used in this chapter:

A. "Nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed health professional or who volunteers to provide such services without monetary consideration.

B. "Licensed health professional" means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

C. "Nursing facility" means an institution licensed and certified to provide long-term care, and includes those facilities previously or currently licensed and Medicaid-certified as an Intermediate Care Facility (ICF) or a Skilled Nursing Facility. An intermediate care facility for the mentally retarded (ICF/MR) is not included in this definition.

D. "Resident" means an individual residing in and receiving medical long-term nursing services in a Medicaid-certified nursing facility.

E. "Train-the-trainer program" means a state-approved program which consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

F. "Retraining" means required training for those nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program.

G. "Competency evaluation" means a written or oral examination which addresses each requirement of OBRA 1987 for nurse aides, and a demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

H. "Testing out or challenging the test" means that those individuals acting as nurse aides in nursing facilities as of July 1, 1989, may be determined competent by taking the competency evaluation without enrolling in the approved nurse aide training course.

I. "Deemed competency" means that those individuals who, prior to January 1, 1989, completed a nurse aide training program that met the State's requirements at the time it was offered, may be determined to have completed a training and competency evaluation program and be certified as competent.

J. "State survey agency" means the Bureau of Facility Review in the Division of Health Care Financing, which is responsible for certification of nursing facilities and for conducting surveys to determine compliance with Medicaid requirements.

R414-7B-2. Procedures for Achieving Certification.

A. All nurse aides employed by a nursing facility after July 1, 1989, shall complete the nurse aide training approved by the State Office of Vocational Education, and pass the nurse aide competency evaluation or be enrolled in the nurse aide training program by January 1, 1990.

B. A nursing facility must make the necessary provision for the individual to participate in and complete the competency evaluation by January 1, 1990.

C. Deemed competency

1. Individuals who were certified as nurse aides by the State Office of Vocational Education before January 1, 1989, shall be deemed to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

2. It shall be the responsibility of the nursing facility to provide this in-service training on mental retardation and mental illness and to notify the State Office of Vocational Education when it is completed.

D. Testing out

Those aides employed by a nursing facility on or before July 1, 1989, who have not been deemed certified, if they elect to test out, shall be determined competent by:

1. successfully testing out on the competency evaluation, including the written and skills components of the evaluation, provided by the State Office of Vocational Education or a State Office of Vocational Education-approved program which meets federal requirements; and

2. presenting proof of employment at a nursing facility.

E. Nurse aides certified in other states

Nurse aides certified in other states before July 1, 1989, may be deemed as certified nurse aides in Utah if they complete the approved in-service training on mental retardation and mental illness provided by the nursing facility. After July 1, 1989, they may be deemed as certified nurse aides in Utah if they have documentation of certification in another state.

R414-7B-3. Competency Evaluation.

A. Administration of the competency evaluation

1. Vocational centers and community colleges are approved by the State Office of Vocational Education to provide competency evaluations to nurse aides, using both written or oral examinations and demonstration of skills.

a. The written examination shall be administered by the vocational centers and community colleges approved by the State Office of Vocational Education with the following exception. Nursing facility personnel may proctor the written examination when the State Office of Vocational Education is confident that the competency evaluation program is secure from tampering, is standardized and scored by a testing, education or other organization approved by the State Office of Vocational Education, and requires no actual administration or

scoring by facility personnel.

b. The skills demonstration component shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and must be administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age. The skills demonstration shall be administered only by the State Office of Vocational Education.

2. If the individual fails to satisfactorily complete the evaluation, the individual must be advised of the areas in which he was inadequate, and that he may take the evaluation a maximum of three times.

3. Any individual who takes the competency evaluation must be advised in advance that a record of the successful completion of the evaluation shall be included in the nurse aide registry, and shall be required to sign a Release of Information form which indicates the nurse aide's understanding of information that is required to be entered into the nurse aide registry.

4. The State Office of Vocational Education shall periodically update and validate the competency evaluation.

B. Content of the Competency Evaluation

1. Written or oral examination

The State Office of Vocational Education shall establish a written or oral examination (in the case of individuals with limited literacy in English) that addresses each requirement as prescribed in OBRA 1987. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system which maintains the integrity of both the pool of questions and the individual evaluations.

2. Demonstration of skills

The competency evaluation must include demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

C. Requirements for the skills training component

1. For the skills training component of the evaluation, a performance record shall be developed for each nurse aide training program of major duties and skills taught which consist of, at a minimum:

a. a listing of the duties and skills expected to be learned in the program;

b. a record documenting when the aide performs this duty or skill;

c. documentation of satisfactory or unsatisfactory performance;

d. the date of the performance;

e. the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his employer shall receive a copy of this record. If the individual did not successfully perform all the duties and skills on this performance record, he shall receive supervision for all duties and skills not satisfactorily performed until such satisfactory performance is confirmed.

3. The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance of five tasks, all of which are included in the performance record. These five tasks are selected for each aide from a pool of evaluation items ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty.

R414-7B-4. Nurse Aide Training Program.

A. Administration

1. Training and competency evaluation programs shall be administered through the State Office of Vocational Education in accordance with a contract between the Division of Health Care Financing and the Department of Education.

2. All agencies conducting nurse aide training programs shall be approved by the State Office of Vocational Education.

3. Each area vocational center, community college, or nursing facility that conducts nurse aide training programs shall designate a qualified registered nurse to oversee training and instruction.

B. Training program approval and review

1. Process

a. The State Office of Vocational Education shall review and render a determination regarding approval or disapproval of any nurse aide training when requested to do so by a Medicare or Medicaid-participating nursing facility. The State Office of Vocational Education, at its option, may also agree to review and render approval or disapproval of any nurse aide training program when requested to do so by another entity.

b. The State Office of Vocational Education must, within 30 days of the date of an acceptable request, either advise the requestor of the State Office of Vocational Education's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

c. Nursing facilities may apply for approval of a nurse aide training program by completing an application provided by the State Office of Vocational Education.

2. Requirements

a. The State Office of Vocational Education shall approve any nurse aide training program which meets the criteria specified in OBRA 1987, the federal Health Care Financing Administration's guidelines, and guidelines designated by the State Division of Health Care Financing.

b. Minimal content requirements must be met for the nurse aide training program to be approved by the State Office of Vocational Education. The nurse aide training program must consist of no less than 80 hours of training. The curriculum of the nurse aide training program must include at least the following subjects:

1) at least 16 hours of training in the following areas prior to any direct contact with a resident:

a) communication and interpersonal skills;

b) infection control, including AIDS;

c) safety and emergency procedures;

d) promoting residents' independence;

e) respecting residents' rights;

f) basic nursing skills.

2) The skills training of at least 16 hours shall ensure that each nurse aide, at a minimum, demonstrates competencies in the following areas:

a) Basic nursing skills:

(1) caring for residents when death is imminent;

(2) taking and recording vital signs;

(3) measuring and recording height;

(4) caring for residents' environment;

(5) recognizing abnormal signs and symptoms of common diseases and conditions.

b) Personal care skills, including, but not limited to:

(1) bathing, including mouth care;

(2) grooming;

(3) dressing;

(4) toileting;

(5) assisting with eating and hydration;

(6) proper feeding techniques; and

(7) skin care.

c) Basic restorative services:

(1) use of assistive devices in ambulation, eating, and dressing;

(2) maintenance of range of motion;

(3) proper turning and positioning in bed and chair;

(4) bowel and bladder training;

(5) care and use of prosthetic and orthotic devices; and

(6) transfer techniques;

d) Mental health and social service skills:

(1) modifying his own behavior in response to the resident's behavior;

(2) identifying developmental tasks associated with the aging process;

(3) training the resident in self-care according to the resident's ability;

(4) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(5) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and

(6) using the resident's family as a source of emotional support.

e) Residents' rights:

(1) providing privacy and maintaining confidentiality;

(2) promoting the residents' rights to make personal choices to accommodate their needs;

(3) giving assistance in solving grievances;

(4) providing needed assistance in getting to, and participating in, resident and family groups and other activities;

(5) maintaining care and security of residents' personal possessions;

(6) providing care which maintains residents free from abuse, mistreatment, or neglect; reporting any instances of such poor care to appropriate facility staff; and

(7) maintaining the residents' environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

c. Qualifications of instructors:

1) Non-nursing facility-based programs:

Nurse aide training and competency evaluation programs must have a program coordinator or primary instructor who is a registered nurse with at least two years of experience in caring for the elderly or chronically ill of any age.

2) Nursing facility-based programs:

a) The program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA 1987, Section 4211, requirements.

b) The primary instructor must be a licensed nurse with at least one year of experience in a nursing facility.

3) The program coordinator or primary instructor must have successfully completed a "train-the-trainer" type program approved by the State Office of Vocational Education or have demonstrated competence to teach adult learners as defined by the State Office of Vocational Education.

4) Qualified personnel from the health professions may supplement the program coordinator or primary instructor in the case of non-facility programs, or the program instructor in the case of facility-based programs, and as program trainers in both facility-based and non-facility-based programs;

5) Program trainers may include: registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.

6) To function as program trainers, these health professionals must have a minimum of one year of current experience in the care of the elderly or chronically ill of any age, or have equivalent experience, and must be currently licensed, registered or certified in their field.

7) Licensed practical nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have at least two years of experience in caring for the elderly or chronically ill of any age, or have equivalent experience.

8) Instructor-to-student ratio

A student-to-instructor ratio of 15:1 for clinical instruction and 30:1 for theory instruction shall not be exceeded.

9) Facilities

A classroom must be provided that has the following:

a) adequate space and furniture for the number of students;

b) adequate lighting and ventilation;

c) comfortable temperature;

d) appropriate audio-visual equipment;

e) skills lab equipment to simulate a resident's unit;

f) clean and safe environment;

g) appropriate textbooks and reference materials.

C. Compliance reviews

1. Initial post-approval and ongoing reviews

After the initial approval of a training and competency evaluation program, an initial one-year post-approval review shall be done by the State Office of Vocational Education to determine the program's compliance with the OBRA 1987 requirements.

2. After the one-year review, an on-site review shall be completed at least every two years by the State Office of Vocational Education.

3. A self-evaluation shall be submitted by the program provider to the State Office of Vocational Education each year that an on-site review is not scheduled.

4. Minimum program review standards

The training and evaluation program review must include:

a. skills training experience;

b. maintenance of qualified faculty members for both classroom and skills portions of the training and competency evaluation programs;

c. maintenance of the security of the competency evaluation examinations;

d. a record of complaints received about the program;

e. a record that each nursing facility has provided certified nurse aides with six hours of staff development training per quarter with compensation for the training;

f. curriculum content that meets federal and state requirements; and

g. classroom facilities that meet federal requirements for nurse aide training programs.

5. Division of Health Care Financing shall enforce the standards for nurse aide training and competency evaluation described in OBRA 1987, Section 4211, which are hereby adopted and incorporated by reference.

6. In addition to the required nurse aide training, all nurse aides shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include, but is not limited to, an explanation of:

1) the organizational structure of the facility;
2) the facility policies and procedures;
3) the philosophy of care of the facility;
4) the description of the resident population; and
5) the employee rules.

R414-7B-5. Nurse Aide Registry.

A. A central nurse aide registry has been developed and shall be maintained under the direction of the State Office of Vocational Education. This registry must include identification of individuals who have successfully completed and passed the nurse aide training and competency evaluation program with a passing score of 75 percent or above.

B. Any organization responsible for the nurse aide competency evaluation program must report to the nurse aide registry within 30 days the names of all individuals who have satisfactorily completed the nurse aide training and competency evaluation program.

C. The registry shall also document substantiated allegations of resident neglect, abuse, or misappropriation of resident property by a nurse aide in a nursing facility, including an accurate summary of the findings. If the nurse aide disputes the findings, this information shall also be entered into the registry.

D. The Division of Health Care Financing's Bureau of Facility Review shall investigate such complaints. A nurse aide shall be entitled to a hearing, to be conducted through the Division of Health Care Financing, before a substantiated claim can be entered against the nurse aide.

E. The Division of Health Care Financing shall enforce the standards for the nurse aide registry described in OBRA 1987, Sections 4211 and 4212, which are hereby adopted and incorporated by reference.

R414-7B-6. Limitations.

A. The State Office of Vocational Education may not approve a facility-based nurse aide training program if, in the prior two years, the facility's participation in the Medicare and Medicaid programs has been terminated.

B. Nurse aide training programs must be reviewed and reapproved at least every two years.

C. The competency evaluation, both written and skills components, may not be administered by a skilled nursing facility which participates in Medicare nor a nursing facility which participates in Medicaid.

D. After January 1, 1990, nursing facilities may not use nurse aides for more than four months unless they have completed the nurse aide training and competency evaluation program.

E. After January 1, 1990, a nursing facility may not permit an individual to work as a nurse aide for monetary compensation unless the facility has checked the credentials of the nurse aide through the nurse aide registry.

F. Upon review of program performance standards, those programs not meeting minimum requirements and which do not provide an acceptable plan for correcting deficiencies shall be terminated from the program.

G. Retraining

Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program shall be required to undergo necessary retraining.

KEY: medicaid

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-11. Podiatry Services.

R414-11-0. Policy Statement.

A. Podiatry services are available to eligible Medicaid recipients, and may be performed by a physician, osteopath or podiatrist as specified by the respective professional license.

B. Podiatric services include the examination, diagnosis and treatment of the human foot through medical, mechanical or surgical means. Podiatric service may be provided to Medicaid recipients when the recipient has a foot problem that causes:

1. difficulty walking or inability to walk;

2. painful or distressing impairment which limits independent function; or

3. crippling.

C. Reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunion), tendinitis, "and other related conditions," that result from, or are associated with, partial displacement of foot structures are covered services.

D. Surgical correction in the subluxated foot structure that is an integral part of the treatment of a foot injury is a benefit of the Medicaid program. Surgical correction undertaken to improve the function of the foot or to alleviate an associated symptomatic condition is also a covered service.

R414-11-1. Authority and Purpose.

A. Authority. Medicaid podiatry services are authorized under the provisions of 42 CFR at Part 405.310 and 42 CFR at Part 440.60. The Medicaid program is designed to provide services within financial limitations.

B. Purpose. The purpose of the program is to increase the functioning ability of the Medicaid patient.

R414-11-2. Definitions.

A. The "practice of podiatry" means the examination, diagnosis, or treatment medically, mechanically or surgically of the ailments of the human foot. In accordance with Utah Code Annotated 58-5-1, the practice of podiatry is limited to the human foot.

B. The medical term "subluxation" means a partial or complete dislocation.

C. The medical term "pes planus" means flatfoot.

D. "Retroactive eligibility" means that if payment for past medical expenses is requested, and eligibility exists, retroactive medical assistance may be approved. The Department of Social Services, Office of Community Operations, will determine the eligibility.

R414-11-3. Eligibility Requirements/Coverage.

A. Podiatry services are available to categorically and medically needy individuals under Medicaid.

B. Retroactive eligibility (See R414-11-8 (E) below).

R414-11-4. Program Access Requirements.

The podiatry services are available to categorically and medically needy individuals under Medicaid.

R414-11-5. Service Coverage.

A. Procedures determined to be appropriate for the podiatry program are identified by CPT-4 codes found in the Health Common Procedure Coding System (HCPCS). These procedures include:

1. foot incision;

2. foot excision;

3. repair, revision or reconstruction;

4. surgery;

5. nail treatment;

6. laboratory procedures; and

7. radiology.

B. Laboratory procedures necessary for diagnosis and treatment of the patient may be performed by the podiatrist in the office when appropriate equipment is available. Laboratory services provided by an independent laboratory or hospital outpatient laboratory, on the order of a podiatrist, must be billed directly by the laboratory.

C. Treatment of a fungal (mycotic) infection of the toenail is a Medicaid benefit in the following circumstances:

1. There is clinical evidence of mycosis demonstrated by;

a. inflammation;

b. infection;

c. Erythema (redness of the skin due to congestion of capillaries); or

there is marked limitation of ambulation.

D. Nursing Home Care:

Medicaid recipients who reside in a nursing home may receive benefits from the podiatry program. Some of the benefits include:

1. excision of nail or nail matrix;

2. removal of partial or complete ingrown or deformed nails;

3. surgical procedures;

4. radiology procedures;

5. laboratory procedures;

6. the cutting or removal of corns, warts, callouses or nails of patients who are at risk due to complications from certain diseases such as diabetes, arteriosclerosis, or Buerger's Disease;

7. reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunion), tendinitis, which result from or are associated with partial displacement of foot structures; or

8. surgical correction in the subluxated foot structure which is an integral part of the treatment of a foot injury, or if it is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition.

E. Medical Supplies

1. Shoes are a Medicaid benefit only when:

a. attached to a brace or prosthesis; or

b. especially constructed to provide for a totally or partially missing foot.

2. Supplies and materials used by the podiatrist over and above those usually included for the surgery procedure may be billed separately. The materials provided must be listed.

3. Supplies for surgery performed in the office rather than a surgical center or outpatient hospital are a benefit of this service.

R414-11-6. Standards of Care.

A. The services must be considered under accepted standards of medical practice to be a specific and effective treatment for the recipient's condition.

B. The services must be:

1. of a level of complexity and sophistication, or the condition of the recipient must be such that services required can be safely and effectively performed only by a qualified podiatrist. To constitute podiatry, a service must, among other things, be reasonable and necessary to the treatment of the patient's illness. If the patient's expected health benefit would be insignificant in relation to the extent and duration of the patient's podiatry service, it would not be considered reasonable and necessary.

2. reasonable with regard to the amount, frequency and duration of services.

R414-11-7. Limitations.

A. General Limitation

1. Limitations which apply to the physicians program will also apply to the services provided by a podiatrist. If prior approval is required for a procedure performed by a physician, although it relates to the foot or foot structure, it requires prior authorization in the podiatry program.

2. Podiatric services are limited to examination, diagnosis, and treatment described in service coverage (R414-11-5) above.

3. A person licensed to practice podiatry may not administer general anesthesia, and may not amputate the foot. (Utah Code Annotated Section 58-5-12.)

4. Palliative care must include the specific service and must be billed by the specific service and not by using an office call procedure code.

B. Specific Limitations

1. Routine Foot Care

a. The preventive maintenance care of the type ordinarily within the realm of self care or nursing home care considered to be routine, is not covered as a podiatry service. This includes:

(1) the cutting or removal of corns, warts or callouses (42 CFR 405.310), unless a danger to the patient exists (for example: diabetes, arteriosclerosis or Buerger's disease);

(2) the trimming of nails (including mycotic nails) (42 CFR 405.310), except as specifically identified (R414-11-5, Service Coverage (above);

(3) the cleaning and soaking of the feet;

(4) the use of massage or skin creams;

(5) any services performed in the absence of localized illness or injury (42 CFR 405.310);

(6) any application of topical medication or

(7) any treatment of fungal (mycotic) infection of the toenail, except as specifically documented.

2. Nursing Home Foot Care

a. Nursing home patient foot care is limited to one visit every two months. Services in excess of this standard require prior authorization and must be documented in sufficient detail to reasonably justify the necessity of the service.

b. Foot care which may be performed for a nursing home recipient by a nursing home employee is not a Medicaid benefit.

c. The debridement of mycotic toenails is limited to once every 60 days. Exceptions will be authorized if medical necessity is documented by the patient's physician and attached to the request for prior authorization.

3. Subluxation or Pes Planus:

Further services excluded from coverage are defined in 42 CFR 405.310(1)as:

1. The treatment, including evaluation, of subluxations of the feet. These are structural misalignments, or partial dislocation (other than fractures or complete dislocations) of the joints of the feet which require treatment only by nonsurgical methods regardless of underlying pathology.

2. The treatment, including evaluations and the prescriptions of supporting devices, of the local condition of flattened arches (pes planus) regardless of the underlying pathology.

C. Prosthetic Devices/Shoes/Orthotics

1. A "prosthetic device" means a replacement, corrective or supportive device prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law to:

a. artificially replace a missing portion of the body;

b. prevent or correct physical deformity or malfunctions (including promotion of adaptive functioning); or

c. support a weak or deformed portion of the body.

2. Orthotics, metatarsal head appliances, arch supports, are not benefits of Medicaid although they may generally fit the description of a prosthetic device.

D. Additional Limitations

The following services are excluded from coverage as a Medicaid benefit:

1. shoes, orthopedic shoes or other supportive devices for the feet, except when shoes are integral parts of leg braces or a prosthesis.

2. special shoes such as:

a. mismatched shoes (unless attached to a brace);

b. shoes to support an overweight individual;

c. trade name or brand name shoes considered "orthopedic" or "corrective";

d. "athletic" or "walking" shoes;

3. shoe repair except as it relates to external modification of an existing shoe to meet a medical need, i.e., leg length discrepancy requiring a shoe build up of one inch or more;

4. internal modifications of a shoe;

5. arch supports, foot pads, metatarsal head appliances or foot supports;

6. personal comfort items and services. Comfort items include, but are not limited to arch supports, foot pads, "cookies" or other accessories, shoes for comfort or athletic shoes;

7. manufacture, dispensing or services related to orthotics of the feet;

8. devices which do not artificially replace a missing portion of the body;

9. devices which do not prevent or correct physical deformity or malfunction;

10. devices which do not support a weak or deformed portion of the body;

11. office calls, house calls, nursing home calls, billed in addition to a service. Post payment claims review will be performed.

R414-11-8. Prior Authorization.

A. "Prior authorization" means that degree of agency approval for payment of services required to be obtained by a provider. Such approval must be obtained precedent to service being provided. Services requiring prior authorization performed in life threatening or justifiable emergency situations are an exception. Approval of emergency service can be obtained after the fact with appropriate documentation.

1. Unlisted Services

a. All procedure codes which end in 99 and some which end in 49 have the nomenclature:

"unlisted service or procedure"

These procedures require a prior authorization. They also require a "Special Report."

b. A special report is required because the procedure is rarely provided, unusual, variable or new. The special report must include:

(1) medical appropriateness;

(2) information covering need for the procedure;

(3) time, effort, equipment necessary;

(4) complexity of symptoms;

(5) final diagnosis;

(6) pertinent physical findings;

(7) diagnostic and therapeutic procedures previously completed or expected;

(8) concurrent problems;

(9) follow-up care.

2. Service to Nursing Home Patients:

a. Prior authorization is not necessary for the following procedures in behalf of a nursing home patient:

(1) excision of nail and/or nail matrix;

(2) excision of ingrown or deformed nail for permanent removal.

b. Surgical procedures in behalf of Medicaid recipients who reside in a nursing home will be subject to post payment review and recovery if not appropriate.

c. Prior authorization is required for the debridement of mycotic toenails in excess of once every 60 days.

d. Prior authorization is required if trimming corns, warts, callouses or nails is performed for any patient with diabetes, arteriosclerosis, or Buerger's Disease, more frequently than every 60 days.

B. Criteria for Approval of Requests

Prior approval for treatment or surgery that requires prior authorization will be reviewed and approved or denied based on the following criteria:

1. Services are for treatment of medical disorders or disabilities.

2. Services are provided for those disorders that are incapacitating for the patient and are reasonable and necessary for treatment of specific medical disorders or disabilities. Removing bunions for a bedfast patient would be disallowed;

3. Services are provided with the expectation that the condition under treatment will improve in a reasonable and generally predictable time.

4. Services are professionally appropriate under the standard in the field, utilizing professionally appropriate methods and materials in a professionally appropriate environment.

5. Services that are requested are justified with sufficient information for approval.

C. Request for Prior Authorization Form:

This form must include the following information:

1. the diagnosis and the severity of the condition;

2. the prognosis;

3. the expected independence of the recipient or benefit of the procedures;

4. the procedure code(s);

5. the patient x-rays (if applicable);

6. adequate clinical assessment of patient needs.

All requests for prior approval must be made before the surgery or service is performed, except for recipients made retroactively eligible for Medicaid.

D. Retroactive Eligibility

When a patient is made retroactively eligible for Medicaid and services have already been rendered which require prior approval, the following procedures must be followed:

1. The recipient must present a Medicaid Identification Card (ID Card), or an Interim Verification of Eligibility Form (695) which verifies the eligibility status of the recipient and the inclusive dates of eligibility.

2. The Request for Prior Approval Form must be completed.

3. The retroactive eligibility status of the recipient and appropriate documentation of the medical need for the procedure must be stated on the Request for Prior Approval Form.

4. The date of surgery or service must be within the dates of eligibility.

E. Out-of State

1. Any Medicaid request for out-of-state medical services or travel other than those listed below, must have prior authorization from the Division of Health Care Financing. There are four areas in which a Medicaid recipient may live (adjacent to the state line) and may go to another state, as stipulated, for medical services.

2. The following border towns have been identified by the Department of Social Services, Office of Assistance Payments, and entered into the Medicaid Provider File:

a. Rich County residents may go to Evanston, Wyoming; Riverton, Wyoming; Preston, Idaho; Paris, Idaho or Montpelier, Idaho.

b. San Juan County residents may go to Cortez, Del Norte, Dolores, Durango, Grand Junction and Montrose, Colorado; or to Shiprock or Farmington, New Mexico.

c. Residents of the Snake Valley area in Millard County, (Garrison, Gandy, Burbank and Eskdale), may go to Ely, Nevada and East Ely, Nevada.

R414-11-9. Reimbursement for Podiatry Service.

A. Introduction

There are numerous procedure codes listed in the Podiatrist Provider Manual for Medicaid services. Only the listed procedure codes are reimbursable by the Medicaid Medical Information System (MMIS).

B. Office Calls

Office calls are not designated by the time involved but by the service provided. The CPT identifies the elements and

services included in each level of office call or house call. Utilizing these designations, the appropriate codes are identified in the podiatry index.

C. Nursing Home Patients

All surgical procedures provided for a nursing home recipient must be medically necessary and appropriate, and may be subject to post payment review.

D. Injection Procedures

Procedure codes with the J prefix are for injections. The J codes specifically identified for podiatric use are in the Podiatry Provider Manual.

E. Laboratory Procedures

Only those laboratory procedures for which the podiatrist or physician has the appropriate office equipment may be billed to Medicaid. Reimbursable laboratory procedure codes are listed in the Podiatry Provider Manual.

KEY: medicaid
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Notice of Continuation December 20, 1999 **26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14. Home Health Service.
R414-14-0. Policy Statement.

A. Home health services are part-time intermittent health care services, based on medical necessity, provided to homebound or semi-homebound persons in their permanent place of residence as an alternative to institutional care. Home health services are provided by a public or private state licensed, Medicare certified home health agency. Home health services are based on physician order and plan of care.

B. A hospital, skilled nursing facility, or intermediate care facility does not qualify as a person's place of residence for the purpose of receiving home health service.

R414-14-1. Authority and Purpose.

A. Authority

1. Home health service is a required Medicaid, Title XIX program authorized by Section 1901 et seq., of the Social Security Act, Section 1905(a)(7) of the Social Security Act and 42 CFR 440.70.

2. This rule is also authorized by Utah Code Annotated Sections 26-1-4.1, 26-1-5, and 26-18-3.

B. Purpose

The purpose of home health care is to provide skilled or supportive care to patients in their place of residence as an alternative to premature or inappropriate institutionalization. Home health care must minimize the effects of disability or pain and promote, maintain, or protect health while allowing individuals to live at home in personal dignity and independence.

R414-14-2. Definitions.

A. "Home health agency" means a public agency or private organization, which is licensed by the Bureau of Health Facility Licensure under the authority of Utah Code Annotated, Title 26, Chapter 21, and in accordance with Utah Administrative Code 1989, 432-700. A home health agency is primarily engaged in providing skilled nursing service and other therapeutic services.

B. "Home Health Visit" means a personal contact in the place of residence of a patient made for the purpose of providing a covered service by appropriate personnel under the supervision of a home health agency.

C. "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

D. "Prior authorization" means that degree of approval for payment of services required to be obtained from Division of Health Care Financing staff by a licensed provider before the service is provided.

R414-14-3. Eligibility Requirements/Coverage.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

A. Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

B. The home health agency shall accept a recipient for home health care on the basis of a reasonable expectation that a recipient's needs can be met adequately by the agency in the recipient's place of residence.

R414-14-5. Service Coverage.

A. Home health service shall be provided to a patient who is under the care of a physician who certifies the necessity for home health service and writes orders on which a plan of care can be developed.

B. The total plan of care shall be reviewed and signed by the attending physician and home health agency personnel as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

C. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.

D. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

E. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions for care to be provided.

F. Supportive maintenance home health care serves those patients who are semi-homebound, who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

G. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program, and all requirements of the home health program must be met in relation to orders, plan of care, 60 day review and recertification.

H. Therapy services: physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care.

I. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

R414-14-6. Standards of Care.

A. Home health service shall be provided in accordance with 42 CFR 440.70, which is hereby adopted and incorporated by reference.

B. Quality, cost-effective care and a safe environment in the home shall be provided through adequate training, knowledge, judgement, and skill of the registered nurse or licensed practical nurse licensed in the State of Utah in accordance with Title 58, Chapter 31 Utah Code Annotated.

C. Home health aide services shall be provided through written instructions and under the supervision of a registered professional nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

R414-14-7. Limitations.

A. Home health service must be cost effective. It must cost less, over the long term service period, to provide the required care and service in the patient's home than it would cost to meet the medical needs in an alternative setting.

B. Home health service must be based on physician orders and a plan of care reviewed and recertified every 60 days, or more frequently if patient condition indicates.

C. An initial assessment visit may be provided without prior authorization to assess the patient's needs and establish the plan of care. After the initial visit, all home health care and service must be based on prior authorization.

D. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

1. Supplies used during the initial visit to establish the plan of care.

2. Supplies that are consistent with the plan of care.

3. Non-durable equipment.

E. Supportive maintenance home health care is limited to one visit per day.

F. All home health service must be supervised by a registered nurse employed by an approved, certified home health agency. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

G. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

H. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

I. Housekeeping or homemaking services are not covered home health benefits.

J. Occupational therapy is not a covered Medicaid benefit.

R414-14-8. Prior Authorization.

A. Home health nursing service beyond the initial evaluation visit requires prior authorization.

B. All home health service beyond the initial visit, including supplies and therapies, shall be specified in the plan of care submitted for prior authorization by the home health agency selected by the patient to provide the service. The level of service, e.g., skilled or maintenance service, will be established and approved based on the prior authorization request. When level of service needs change, a new prior authorization request must be submitted.

C. Therapy services shall be supported by medical need and by prior authorization before any service is provided.

R414-14-9. Reimbursement for Services.

Reimbursement for home health services shall be provided as documented in the Utah State Medicaid Plan, ATTACHMENT 4.19-B.

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	26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14A. Hospice Care.

R414-14A-0. Policy Statement.

A. Hospice care derives from the recognition that the impending death of an individual warrants a change in focus from curative care to palliative care.

B. Hospice care shall be rendered by a Medicare-certified hospice and shall be provided in accordance with Medicare regulations.

C. Hospice coverage shall be available for at least 210 days.

R414-14A-1. Authority and Purpose.

A. Authority

Section 9505 of Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), enacted on April 7, 1986, amended Title XIX of the Social Security Act to permit hospice care benefits as defined under sections 1905(a)(18) and 1905(o) of the Act to be provided to individuals eligible for Medicaid under the State Plan.

B. The purpose of hospice care is to help terminally ill individuals continue life with minimal disruption in normal activities while remaining primarily in the home environment.

R414-14A-2. Definitions as Used in this Chapter.

A. "Hospice" means a public agency or private organization that is primarily engaged in providing care to terminally ill individuals, meets the Medicare conditions of participation for hospices, and has a valid provider agreement.

B. "Terminally ill" means that the individual has a medical prognosis that his life expectancy is six months or less.

C. "Attending physician" means a physician who is identified by the individual, at the time he elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

D. "Bereavement counseling" means counseling services provided to the individual's family after the individual's death.

E. "Medical social services" means the provision of counseling and assessment activities which contribute meaningfully to the treatment of a recipient's condition.

F. "Inpatient care" means the hospice services provided by an inpatient facility to a recipient who has been admitted to a hospital, long-term care facility, or facility of a hospice that provides care 24 hours a day.

G. "Interdisciplinary group" means a group of qualified individuals with expertise in meeting the special needs of hospice recipients and their families, which includes at least:

1. one physician;
2. one registered nurse;
3. one social worker; and
4. one pastoral or other counselor.

H. "Election statement" means a written statement electing hospice care and filed by a recipient, or his representative, with a hospice.

I. "Respite care" means short-term inpatient care provided to the recipient only when necessary to relieve the family members or other persons caring for the recipient.

R414-14A-3. Eligibility Requirements/Coverage.

To be covered, hospice services shall meet the following requirements:

A. Services shall be reasonable and necessary for the palliation or management of the terminal illness as well as related conditions.

B. A certification that the individual is terminally ill shall be completed.

C. The individual shall elect hospice care by filing an election statement with a particular hospice.

D. A plan of care shall be established by the interdisciplinary group.

R414-14A-4. Program Access Requirements.

Hospice care is available to categorically and medically needy individuals under Medicaid.

R414-14A-5. Service Coverage.

The following services are required hospice services:

A. nursing care provided by or under the supervision of a registered nurse;

B. medical social services provided by a qualified social worker under the direction of a physician;

C. administrative and general supervisory activities performed by physicians who are employees of, or working under arrangements made with, the hospice;

D. counseling services for the individual and family members or other persons caring for the person at home;

E. short-term inpatient care in a participating hospice inpatient unit, or a hospital, skilled nursing or intermediate care facility that additionally meets the special hospice standards regarding staffing and patient areas;

F. medical appliances and supplies, including drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered;

G. home health aide and homemaker services furnished by qualified aides;

H. physical therapy, occupational therapy, and speech-language pathology services provided for purposes of symptom control.

R414-14A-6. Standards of Care.

The State shall enforce the Medicare standards of care as outlined in 42 CFR, Part 418, which are hereby adopted and incorporated by reference.

R414-14A-7. Limitations.

A. Recipients of hospice care shall sign an election of hospice care which waives all other Medicaid coverage except the services of a designated family physician, ambulance service, and services unrelated to the terminal illness.

B. Medicaid shall make no payment to the hospice, selected by the Medicaid recipient, for any services or supplies other than the hospice service.

C. The hospice shall not charge any amount to or collect any amount from the recipient or recipient's family for a covered hospice service during the period of hospice coverage.

D. Payments to a hospice for inpatient care shall be limited

according to the number of days of inpatient care furnished to Medicaid patients. During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed 20 percent of the aggregate total number of days of hospice care provided to all Medicaid recipients during that same period.

E. Respite care shall be provided only on an occasional basis and shall not be reimbursed for more than five consecutive days at a time.

F. Respite care shall not be provided when the hospice recipient is a nursing home resident.

R414-14A-8. Prior Authorization.

Prior authorization procedures are not applicable to hospice services provided to a Medicaid recipient.

R414-14A-9. Reimbursement for Services.

A. Medicaid payments for hospice services shall be made at one of the four predetermined rates established under Medicare.

B. The rates shall be based on the Medicare rates for Utah.

C. For each day that an individual is under the care of a Medicare-certified hospice, the hospice shall be reimbursed in accordance with the established Medicaid fee schedule.

D. Payment rates are based on the type and intensity of the services furnished to the individual for that day according to one of the following levels of care: routine home care, continuous home care, inpatient respite care, or general inpatient care.

E. For recipients in a skilled nursing facility or intermediate care facility who elect to receive hospice service from a Medicare-certified hospice agency, Medicaid shall pay the hospice agency an additional per diem for routine home care and continuous home care days only, to cover the cost of room and board.

1. The room and board rate shall be based on the statewide average base rate for nursing homes (weighted averages without rate differential factors) less a percentage for nursing and related costs.

2. The nursing and related costs are defined as cost centers 07 and 08 on the facility's cost profile. The percentage is calculated by taking the percent of 07 and 08 to the total reported costs.

3. Medicaid reimbursement to the intermediate care or skilled nursing facility for the recipient shall cease.

4. The hospice agency shall reimburse the intermediate care or skilled nursing facility for the cost of room and board.

5. Room and board costs, in this context, shall include: performance of personal care services (including assistance in the activities of daily living), socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-25. Mental Health Clinic Services.

R414-25-0. Policy Statement.

Mental health clinic services are preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to outpatients to meet the recipient's mental health needs, promote self-sufficiency, and systematically reduce the recipient's reliance on support systems. Services are furnished by or under the direction of a physician.

R414-25-1. Authority and Purpose.

Mental health clinic services are provided under the authority of section 1905(a)(9) of Title XIX of the Social Security Act and the 42 CFR 440.90 "Clinic Services" as an optional Medicaid service. As of January 1, 1989 mental health clinics may provide services under the "Other Diagnostic and Rehabilitative Services" option 42 CFR 440.130. Under this option, services may be provided in settings other than the mental health clinic, as appropriate, but not to include inpatient hospitals.

R414-25-2. Definitions As Used in This Chapter.

A. "Clinical team" means a group that includes at least a physician and an individual experienced in the diagnosis and treatment of mental illness who evaluates each recipient's need for mental health clinic services and develops an individual treatment plan, as appropriate. If the physician satisfies both criteria, the second team member shall be a licensed supervising professional who represents a service relevant to the client's need.

B. "Direct supervision" means the supervising professional oversees the care provided to the client. The supervising professional need not necessarily be present in the same room when the service is rendered, but shall be in the clinic and immediately available to provide assistance and guidance. Documentation shall be sufficient to reflect the active participation of the supervising professional in all aspects of the client's care and treatment.

C. "Evaluation" means identifying the existence, nature, or extent of illness, injury, or other health deviation in a recipient for the purpose of determining the need for medically necessary services by a licensed supervising professional and the reviewing and updating of the treatment plan every 90 days by the clinical team. A student intern, licensed practical nurse, or other clinic staff trained to work with psychiatric patients may obtain the intake information and prepare the evaluation report under the direct supervision of a licensed supervising professional.

D. "Group therapy" means face-to-face clinical treatment of two or more recipients or sets of families, not to exceed 10 individuals, in the same session, to improve the recipient's emotional and mental adjustment and social functioning based on measurable treatment goals identified in the individual's treatment plan. Medicaid reimbursement can be claimed only for the Medicaid recipients receiving group therapy. Therapy services shall be rendered by a licensed supervising professional or by other clinic staff trained to work with psychiatric patients, working under the direct supervision of a licensed supervising professional.

E. "Individual therapy" means face-to-face interventions with an individual recipient with focus on improving the recipient's emotional and mental adjustment and social functioning based on measurable treatment goals identified in the individual's treatment plan. Therapy services shall be rendered by a licensed supervising professional or by other clinic staff trained to work with psychiatric patients, working under the direct supervision of a licensed supervising professional.

F. "Intensive mental health day treatment" means a structured individualized psychosocial rehabilitation program provided to a group in a licensed day treatment facility to reduce or control the recipient's psychiatric symptoms so as to eliminate or decrease the need for hospitalization.

G. "Licensed supervising professional" means a licensed physician, licensed psychologist, certified or clinical social worker, registered nurse with advanced training or experience in psychiatric nursing, licensed social service worker, or licensed marriage and family therapist, as defined in Title 58 of Utah Code Annotated.

H. "Medication management" means prescribing, administering, monitoring, and reviewing the recipient's medication and medication regimen; and providing appropriate information to the recipient regarding the medication regimen. This service shall be rendered only by a physician, registered nurse, or other practitioner licensed under state law to prescribe, review, or administer medication and acting within the scope of his license.

I. "Mental health day treatment" means a structured individualized psychosocial rehabilitation program provided to a group in a licensed day treatment facility to reduce or control the recipient's psychiatric symptoms so as to prevent relapse or hospitalization and improve or maintain the recipient's level of functioning according to the individual's treatment plan. Day treatment may include individual therapy, group therapy, crisis management, recreational therapy, and other activities or treatment to restore and maintain the recipient's health and hygiene, social, interpersonal, and other daily living skills according to the individual treatment plan.

J. "Outpatient" means that a patient who is receiving professional services at an organized medical facility, or distinct part of such a facility, which is not providing him with room and board and professional services on a continuous 24-hour-a-day basis, 42 CFR 440.2. The definition of an outpatient does not exclude residents of long term care facilities from receiving clinic services. However, because of the outpatient requirement, eligibility for clinic services is limited to those patients who for the purpose of receiving necessary health care go or are brought to the clinic, or other site at which the clinic staff is available, and who on the same day leave the site at which the services are provided. State Medicaid Manual Section 4320 (D).

K. "Physician direction" means a physician directly affiliated with the clinic assumes professional responsibility for the services provided and assures that the services are medically appropriate. The physician shall oversee the patient's care, prescribe the type of care provided and periodically review the need for continued care. The physician need not be an employee of the clinic, or be utilized on a full time basis, or be

present in the facility during all hours that services are provided; but the physician shall spend as much time in the facility as is necessary to assure that patients are getting services in a safe and efficient manner in accordance with accepted medical standards.

L. "Plan of care" means a written, individualized plan, developed by a clinical team, to improve the patient's condition to the point where the patient's continued participation in the program, beyond occasional maintenance visits, is no longer necessary.

M. "Prior authorization" means that degree of Medicaid agency approval for payment of services required to be obtained by a licensed provider before the service is provided.

N. "Psychological testing" means administering, evaluating, and submitting a written report of the results of psychometric, diagnostic, projective, or standardized IQ test by a licensed psychologist or physician with experience in testing. Master's level psychologists may administer psychological tests to recipients and may interpret the tests only under the direct supervision of the licensed supervising psychologist or physician. The licensed psychologist or physician shall review the tests administered, actively participate in the interpretation process, review the written report, and countersign the written report.

R414-25-3. Eligibility Requirements/Coverage.

Mental health clinic services are available to Medicaid recipients who are categorically or medically needy and in need of mental health clinic services.

R414-25-4. Program Access Requirements.

Mental health clinic services are covered benefits only when provided by or through a provider licensed by the Utah Department of Social Services as a comprehensive mental health treatment program in accordance with Utah law, Sections 62A-2-101 through 116, Utah Code Annotated 1953, as amended, who can furnish the full scope of mental health clinic services directly or by contract. In addition, the mental health treatment program shall be provided in a freestanding facility that is not part of a hospital but is organized and operated to provide mental health services to outpatients.

R414-25-5. Service Coverage.

The scope of mental health clinic services includes the following services:

A. In Clinic Services

1. Evaluation

a. If a recipient is determined to be in need of mental health clinic services, the evaluation shall include the development of an individualized, measurable treatment plan by a clinical team to improve the recipient's functioning.

b. A unit of evaluation is one hour.

c. Documentation for evaluations shall include the evaluation report, diagnosis, treatment recommendations, individual treatment plan, reevaluation report, and updated treatment plan.

1. A unit of reevaluation is one reevaluation regardless of time required to complete the reevaluation.

2. Documentation for the reevaluation shall include the reevaluation report and updated treatment plan.

2. Psychological Testing

a. A unit of psychological testing is either the level I or level II test regardless of time required to complete the testing and evaluation.

b. Level I psychological test is an examination that will give rough estimates of intellectual or personality assessments to be used as a brief screening or follow-up exam. The test or tests administered should be selected on the basis of reliability in measuring the client's intellectual and emotional functioning as indicated in the treatment plan. The test report will include a brief history, test administered, test scores, an evaluation of the test results, and current functioning of the examinee.

c. Level II psychological test is a complete measure of intelligence, aptitude, educational, and personality functioning including neuro-psychological function, as appropriate. A level II test may be utilized for treatment planning. The test report will include a brief history, tests administered, test scores, evaluation of test results, current functioning of the examinee, diagnosis and prognosis.

3. Individual Therapy

a. A unit of individual therapy is a half-hour session.

b. Documentation of individual therapy shall include clinical notes documenting progress toward treatment goals.

4. Group Therapy

a. A unit of group therapy is a half-hour session per recipient.

b. Documentation of group therapy shall include clinical notes documenting progress toward treatment goals.

5. Medication Management

a. A unit of medication management is the encounter session with the physician or registered nurse.

b. Documentation of medication management shall include the medication order or copy of the prescription signed by the prescribing practitioner and clinical notes.

6. Mental health day treatment

a. A unit of day treatment is one hour.

b. For each two hours of participation in the day treatment program, the client shall receive at least 30 minutes of direct care by a licensed supervising professional. This may be aggregated throughout the day as long as the ratio is maintained. Licensed master therapeutic recreation specialists or therapeutic recreation specialists may conduct the balance of day treatment activities and supervise other mental health staff in conducting the balance of these activities.

c. In day treatment programs for adolescents and children, a ratio of no more than 12 clients per direct staff shall be maintained during the entire day treatment program. Other clinic staff trained to work with adolescents and children may conduct the entire day treatment program if there is documentation of weekly supervision with a licensed supervising professional.

d. Documentation of day treatment shall include monthly progress notes in the clinical record; description of direct care services provided; documentation that the licensed supervising professional direct care requirement was met; documentation of number of hours client participated in day treatment program with date of attendance and type of care provided; definition of treatment plan, goals, and recipient's progress towards goals; description of the relationship between the day treatment

activities attended and the recipient's individual needs and symptomatology. In day treatment programs for adolescents and children, when staff other than licensed supervising professional staff provide the direct care, documentation of weekly supervision with a licensed physician, licensed psychologist, certified or licensed clinical social worker, or registered nurse with advanced training or experience in psychiatric nursing shall be available for review.

7. Intensive mental health day treatment

a. A unit of intensive day treatment is one hour.

b. Recipients eligible for this service shall have a current Global Assessment Scale (GAS) rating or current Global Assessment of Functioning Scale (GAF) rating on Axis V of the Diagnostic and Statistical Manual of Mental Disorders, Third Edition Revised (DSM III-R) between 1 and 20. The recipient remains eligible for intensive day treatment until a rating of 21 or higher on one of the above scales is maintained for four consecutive weeks.

c. Intensive day treatment may include individual therapy, group therapy, crisis management, recreational therapy, and other activities or treatment designed to prevent hospitalization and to stabilize the recipient's condition. Intensive forms of treatment, e.g., individual therapy, group therapy, crisis services, daily living skills activities, should be emphasized.

d. There shall be documentation that the recipient participated in day treatment for at least four hours per day.

e. For each four hours of participation in the intensive day treatment program, the recipient shall receive at least 60 minutes of direct care by a licensed supervising professional. This may be aggregated throughout the day as long as the ratio is maintained. Licensed master therapeutic recreation specialists or therapeutic recreation specialists may conduct the balance of day treatment activities and supervise other mental health staff in conducting the balance of these activities. In addition, a ratio of no more than 10 recipients per licensed professional staff shall be maintained during the entire intensive day treatment program.

f. Documentation of intensive day treatment shall include weekly progress notes in the clinical record documenting medical necessity for intensive day treatment services, GAS or GAF rating, number of hours the recipient participated in intensive day treatment; the direct care services provided, by whom, and for what period of time; treatment plan goals and recipient's progress toward meeting goals.

B. Off-Clinic Site

1. The scope of mental health diagnostic and rehabilitative services includes:

a. evaluation: evaluations provided under this option should be used only when circumstances prevent the client from coming to the clinic;

b. individual therapy;

c. group therapy;

d. medication management;

e. mental health day treatment.

(1) Day treatment services must be provided in a facility that is licensed as a day treatment facility or that is licensed as part of the clinic.

(2) Day treatment provided under the diagnostic and rehabilitative services option may be conducted in a facility that is also the client's place of residence only if the facility is included under the mental health clinic license.

2. All Medicaid regulations and requirements for clinic services also apply to services provided at sites other than the clinic.

a. Services must be provided by or under the direction of a physician.

b. Supervision by the appropriate licensed supervising professional must be provided to staff who provide services off-site.

R414-25-6. Standards for Mental Health Clinics.

A. Physician direction and staff qualifications

1. Services shall be provided by or under the direction of a physician and delivered according to a plan of care approved by staff who meet appropriate professional qualifications. The physician must see the client at least once and shall prescribe the type of care to be provided. The physician's documentation and signature in the medical record shall evidence that the physician was actively involved in the establishment of a written plan of care for each recipient. The physician shall review and update the plan of care every 90 days.

2. Except as noted in Section R414-25-5, all mental health clinic services shall be rendered by a physician or a licensed supervising professional.

B. Evaluation procedures

1. An evaluation should be performed for each recipient being considered for entry into the mental health clinic treatment program. As part of the evaluation, the recipient's primary care physician should be contacted.

2. If it is determined that a recipient is in need of mental health clinic services, a clinical team shall develop an individual plan of care.

C. Plan of care

The treatment plan shall include measurable treatment objectives and the following:

1. the treatment regimen: the specific medical and remedial services, therapies, and activities that will be used to meet the treatment objectives;

2. a projected schedule for service delivery, including the expected frequency and duration of each type of planned therapeutic session or encounter;

3. the type of personnel that will be furnishing the services; and

4. a projected schedule for completing reevaluations of the patient's condition and updating of the plan of care.

D. Periodic review

The clinical team shall periodically review the recipient's plan of care in order to determine the recipient's progress toward the treatment objectives, the appropriateness of the services being furnished and the need for the recipient's continued participation in the program. The clinical team shall perform the review on a regular basis, at least every 90 days, and document the review in detail in the clinical record.

E. Documentation

1. The mental health clinic shall develop and maintain sufficient written documentation for each medical or remedial therapy, service, activity, or session for which billing is made that indicates at least the following:

a. the specific services rendered;
b. the date and actual time the services were rendered;
c. who rendered the services;
d. the setting in which the services were rendered;
e. the amount of time it took to deliver the services;
f. the relationship of the services to the treatment regimen described in the treatment plan;
g. updates describing the patient's progress.

2. The record shall be kept on file and made available as requested for state or federal assessment purposes.

3. For services that are not specifically included in the recipient's treatment regimen, a detailed explanation of how the services being billed relate to the treatment regimen and objectives contained in the plan of care should be included in the clinical record. Similarly, the record shall include a detailed explanation for a medical or remedial therapy session that departs from the plan of care in terms of need, scheduling, frequency or duration of services furnished, e.g., unscheduled emergency services furnished during an acute psychotic episode, explaining why this departure from the established treatment regimen is necessary in order to achieve the treatment objectives.

F. Quality assurance

Each mental health clinic shall have a written quality assurance program subject to review by state and federal Medicaid officials. The program shall include an interdisciplinary committee that meets at least quarterly to review quality of care and make recommendations for improvement. The quality assurance process shall include peer review procedures to appropriately assess quality of care and audit clinical records. The peer review process shall include written procedures to assess the adequacy of the treatment being delivered.

R414-25-7. Limitations.

A. Evaluation - no limits.
B. Psychological Testing - no limits.
C. Individual therapy - no limits.
D. Group therapy - no limits.
E. Medication Management - no limits.
F. Adult or child/adolescent day treatment - prior authorization is required for adult day treatment and child/adolescent day treatment that exceeds 160 units per month. See Section R414-25-8 for prior authorization criteria to grant additional units.
G. Intensive adult day treatment - prior authorization is required for intensive adult day treatment in excess of 160 units per month.

R414-25-8. Prior Authorization.

A. Prior authorization is required for service units in excess of the limits set for day treatment. The prior authorization request shall include sufficient documentation to support the need for additional units. The request shall include at least the following:

1. documentation of the course of the recipient's illness and treatment and a complete summary of the recipient's current condition including symptomalogy and behavior for which additional service units are requested;

2. documentation of initial DSM III diagnoses on Axes I-V and any change in these diagnoses;

3. an estimate of the number of additional service units required and an explanation of how additional service units will be useful in treating the recipient's condition;

4. a statement outlining other alternatives considered or utilized;

5. a copy of treatment plan and a statement of how it will serve to improve the client's condition;

6. the dates of service for which authorization is requested.

B. Criteria for Prior Authorization

Day treatment - To obtain authorization, the provider shall document the recipient meets one of the following criteria:

1. a current GAS rating or GAF rating on Axis V of the DSM III-R of 30 or under;

2. a rating of 40 or under on the GAF Scale for the last 6-12 months;

3. a history of psychiatric illness or psychiatric hospitalizations and corresponding evidence that the increased levels of day treatment requested will maintain or improve current levels of functioning.

4. Three of the following:

(a) a marked deterioration or worsening of the recipient's condition, as evidenced by an increase in symptomatology or behavior related to the diagnosis and a decrease in ability to maintain previous level of functioning;

(b) a change in diagnosis on Axis I and/or V of the DSM III-R indicating the recipient can no longer carry out activities as he had previously and that he is at increased risk for inpatient care;

(c) specific evidence of increased risk of suicide or destructive behavior toward self or others;

(d) a release from an institutional setting within the last 60 days and corresponding need for additional day treatment hours to maintain gains and make a successful transition to the community.

(e) a history of acute episodes or hospitalizations during the past year.

R414-25-9. Reimbursement Method for Clinic Services.

Payment for Clinic Services is limited to the amount paid by Medicare as specified in 42 CFR 447.321.

A. Payment for covered services will be made to qualified providers.

B. Payment for covered services will be made on a fee-for-service basis according to the following methodology:

1. Medicaid payments will be the lesser of (1) the billed usual and customary charges to the general public; or (2) the reasonable cost of providing the service; or (3) the established fee schedule.

2. The usual and customary charge is the lower of the most frequently billed gross charge prior to discounts, or the charge billed to insurance companies.

3. The cost of providing services is calculated by taking a ratio of Medicaid charges to total charges. This ratio is applied to the total allowable costs that correspond to the billable services. Reasonable costs are defined in the "Medicare Provider Reimbursement Manual," HCFA Publication 15-1 and the Utah State Plan

4. All mental health clinic services will be billed using approved HCPC codes.

5. On an annual basis, total Medicaid payments to the provider will be adjusted, as necessary, so that aggregate payments are limited to reasonable cost as determined by a fiscal audit.

KEY: medicaid
1989 **26-1-4.1**
Notice of Continuation December 20, 1999 **26-1-5**
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-31. Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs.

R414-31-0. Policy Statement.

Except for certain age groups, Medicaid excludes coverage of patients in institutions for mental diseases. States may elect to provide inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs as an optional Medicaid service. Utah provides this optional service to Medicaid recipients in accordance with the conditions set forth below.

R414-31-1. Authority and Purpose.

Section 1905(a)(16) and (h) of the Social Security Act authorizes the provision of this service under a state's Medicaid program.

R414-31-2. Definitions.

"Institution for mental diseases" means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. An institution for the mentally retarded is not an institution for mental disease.

R414-31-3. Eligibility Requirements/Coverage.

This service is available to Medicaid recipients under the age of 21 who meet the categorically or medically needy eligibility criteria. Services can be provided before the recipient reaches age 21 or, if the recipient was receiving the services immediately before he reached age 21, before the earlier of the following: (1) the date he no longer requires the services; or (2) the date he reaches age 22.

R414-31-5. Service Coverage.

Inpatient psychiatric services for individuals under age 21 shall be considered a benefit of the Medicaid program only for care and treatment provided under the direction of a physician in:

A. a psychiatric hospital or in an inpatient program in a psychiatric facility under the authority of, or licensed by the Division or Board of Mental Health (Section 64-7-28 Utah Code Annotated) and accredited by the Joint Commission on Accreditation of Hospitals (JCAH); or

B. a psychiatric hospital or in an inpatient program in a psychiatric facility under contract with the Division of Health Care Financing to provide mental health services.

R414-31-6. Standards of Care.

Standards of care must comport with the requirements under the 42 Code of Federal Regulations section 441.150 through 441.181, which is hereby adopted by reference.

R414-31-7. Limitations.

Not applicable

R414-31-8. Prior Authorization.

Although prior authorization for this service is not required, all admissions to approved psychiatric facilities are reviewed by the Bureau of Medical Review to ensure that certification of need requirements are met.

R414-31-9. Reimbursement for Services.

The Utah State Hospital is reimbursed reasonable cost based on Medicare reimbursement principles. TEFRA limits do not apply because of the long lengths-of-stay experienced by many of the patients.

KEY: medicaid

1989	**26-1-4.1**
Notice of Continuation December 20, 1999	**26-1-5**
	26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental Service.
R414-49-1. Introduction and Authority.

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October, 1995 ed., sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions for adults and children.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Services requiring prior authorization or those with other limitations are listed in the Medicaid Dental Provider Manual. This manual is a public document published by the Division of Health Care Financing. A copy of the manual may be obtained by contacting Medicaid Information. In the Salt Lake City area, call 538-6155. In Utah, Idaho, Wyoming, Colorado, New Mexico, Arizona, and Nevada, call toll-free 1-800-662-9651. From other states, call 1-801-538-6155. A copy may also be obtained by writing to:

BUREAU OF MEDICAID OPERATIONS
Box 142911
SALT LAKE CITY, UT 84114-2911

KEY: medicaid
February 15, 1997 26-1-5
Notice of Continuation December 20, 1999 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-50. Dental, Oral and Maxillofacial Surgeons.

R414-50-1. Introduction and Authority.

(1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.

(2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5), which is adopted and incorporated by reference.

R414-50-2. Definitions.

Definitions for this rule are found in R414-1-1. In addition:

(1) "Oral and Maxillofacial Surgeons" means those individuals who have completed a post-graduate curriculum from an accredited institution of higher learning and are board-certified or board-eligible in oral and maxillofacial surgery.

(2) "Oral and maxillofacial surgery" means that part of dental practice which deals with the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the oral and maxillofacial regions.

R414-50-3. Client Eligibility Requirements.

Oral and maxillofacial surgery service is available to categorically and medically needy clients.

R414-50-4. Program Access Requirements.

Oral and maxillofacial surgery services are available only from an oral and maxillofacial surgeon who is a Medicaid provider. These services are available from a dentist provider if an oral and maxillofacial surgeon is unavailable.

R414-50-5. Service Coverage.

(1) Emergency services are covered services. Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

KEY: medicaid

September 13, 1995 **26-1-4.1**

Notice of Continuation December 20, 1999 **26-1-5**

26-18-3

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-100. Emergency Medical Services Do Not Resuscitate.

R426-100-1. Purpose.

This rule implements the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5.

R426-100-2. EMS/DNR Forms, Directives, and Bracelets.

(1) Only the Utah Department of Health may create EMS/DNR forms. Each EMS/DNR form must have a state of Utah watermark and a unique identifying number provided by the Department.

(2) The Department shall distribute the EMS/DNR directive forms to any licensed physician as requested.

(3) An EMS/DNR directive is valid only if made on an EMS/DNR form upon which a physician licensed to practice medicine under Part 1 of Chapter 12, Title 58, the Utah Osteopathic Medicine Licensing Act, or under Part 5, of Chapter 12, Title 58, the Utah Medical Practice Act, also makes a determination certifying that the declarant is in a terminal condition.

(4) Only the Department may create an EMS/DNR bracelet which may be issued only to individuals whose physician has determined that the declarant is in a terminal condition and who submits an EMS/DNR directive to the Department. The bracelet shall clearly display the declarant's name, the name of the proxy if the EMS/DNR directive was made by a proxy, attending physician's name and telephone number, and the unique identifying number from the EMS/DNR form.

R426-100-3. Issuance of an EMS/DNR Directive, or Bracelet.

(1) If the prospective declarant or proxy desires to make an EMS/DNR directive, the physician who makes the determination that the declarant is in a terminal condition must:

(a) explain to the prospective declarant or proxy, and his family, the significance of making an EMS/DNR directive;

(b) complete the information requested on the EMS/DNR form;

(c) sign and date the EMS/DNR form certifying that the declarant is in a terminal condition;

(d) give the original of the directive with the watermark to the declarant or the proxy; and

(e) fill out and give to the declarant or proxy the authorized EMS/DNR bracelet to be placed on the declarant.

(2) The physician or designee, who places the bracelet, must explain to the declarant or proxy how and by whom the EMS/DNR directive may be revoked.

(3) The physician or designee, shall confirm with the Department the execution of the EMS/DNR directive and placement of the EMS/DNR and bracelet or necklace by submitting a duplicate original of the EMS/DNR directive to the Department.

(4) The EMS/DNR directive is effective immediately upon the physician's signing the EMS/DNR directive. The EMS/DNR directive is the property of the declarant and shall be kept with the declarant's medical record, but is not part of the medical record.

(a) To be honored by EMS personnel, the EMS/DNR directive must be placed in an unobstructed view above the declarant on the wall or in close proximity to the head of the bed or the declarant must be wearing the EMS/DNR bracelet, except in health care facilities licensed pursuant to Title 26, Chapter 21.

(b) To be honored by EMS personnel who are called to render service in health care facilities licensed pursuant to Title 26, Chapter 21, the EMS/DNR directive must be displayed in the declarant's medical record or the declarant must be wearing an EMS/DNR bracelet. Health care facility personnel must present the medical record to responding EMS personnel upon their arrival. Health care facilities shall document for Department review that appropriate health care facility staff have been informed of the declarant's EMS/DNR directive sufficient to notify EMS personnel of the existence of the EMS/DNR directive.

(5) If the EMS/DNR directive is not complete or does not appear to conform to statutory and regulatory requirements, the Department shall notify the physician and explain the defect or defects and shall notify the declarant or proxy and EMS agencies likely to respond to the declarant.

R426-100-4. Revocation of an EMS/DNR Directive.

(1) An EMS/DNR bracelet is the embodiment of an EMS/DNR directive and shall be given the same legal treatment as the actual EMS/DNR directive. An EMS/DNR directive may be revoked as provided in Section 75-2-1111.

(2) If both the original of the EMS/DNR directive with the watermark and the EMS/DNR bracelet are not intact, or have been defaced, the EMS/DNR directive is invalid. If an EMS/DNR directive is revoked, EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

(3) If there is any question about the validity of an EMS/DNR directive, the EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

R426-100-5. Treatment of a Declarant with an EMS/DNR Directive.

(1) As part of routine patient assessment, EMS personnel must inspect to see if the declarant is wearing an EMS/DNR bracelet or has an EMS/DNR directive either clearly displayed or located within the declarant's medical record file. If the EMS/DNR directive appears to be incorrectly executed, incomplete, or otherwise flawed in the making, EMS personnel need not honor the EMS/DNR directive. EMS personnel are not liable for failure to honor an EMS/DNR directive.

(2) An EMS/DNR directive only directs that life sustaining procedures be withheld. It does not direct the withholding of medication or the performance of any medical procedure either of which is intended to provide comfort care or to alleviate pain.

(3) In the case of a declarant who has sustained a recent injury clearly unrelated to the terminal condition that served as the basis for the EMS/DNR directive, EMS personnel may contact medical control regarding the provision of emergency medical services to the declarant.

KEY: emergency medical services
October 12, 1999 **75-2-1105.5**
Notice of Continuation December 9, 1999

R527. Human Services, Recovery Services.
R527-302. Income Withholding Fees.
R527-302-1. Income Withholding Fees.

1. When the Office of Recovery Services/Child Support Services (ORS/CSS) initiates income withholding against a payor of income for payment of an obligor's child support, the payor of income may deduct a one-time $25.00 fee to offset the administrative costs it incurs to process the withholding pursuant to Rule 64D, Subsection(d)(ii), Utah Rules of Civil Procedure, and Subsection 21-7-20(1)(b), Utah Code.

2. A payor of income may choose to deduct the entire $25.00 in the first month of withholding, or, pursuant to Subsection 62A-11-406(4), Utah Code, a payor may choose to deduct the $25.00 in monthly increments (for example, $5.00 per month for 5 months) until the full amount has been deducted, provided the total amount withheld does not exceed the maximum amount permitted under Subsection 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Subsection 1673(b).

KEY: child support, income withholding fees
December 3, 1999 **Section 62A-11-406**
Section 21-7-20
Rule 64D, Utah Rules of Civil Procedure

R527. Human Services, Recovery Services.
R527-330. Posting Priority of Payments Received.
R527-330-1. Posting Priority of Payments Received.

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

KEY: child support, debt, public assistance programs
December 16, 1999 62A-11-107
Notice of Continuation December 4, 1997

R590. Insurance, Administration.
R590-127. Rate Filing Exemptions.
R590-127-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Section 31A-2-201(3), to adopt rules for the implementation of the Utah Insurance Code, and pursuant to Section 31A-19a-103, which specifically authorizes the commissioner to exempt any market segment from any or all of the provisions of Chapter 19a of Title 31A.

R590-127-2. Purpose.

Section 31A-19a-203 requires that all insurers and rate service organizations to which Chapter 19a applies file all rates and supplementary rate information, which includes any manual or plan of rates, classification, rating schedule, rating rule, and rate-related underwriting rule, with the Insurance Commissioner within 30 days of the designated effective date. No exception is made in the statute for "(a) rates" or "refer to company" rates or rating plans for specialized or individual risks. All insurers using any of these types of rates or plans would be doing so in violation of the statute.

The purpose of this rule is to define these rates and plans, to make certain exemptions with regards to the filing requirements of Section 31A-19a-203, and to establish certain procedures for that market segment which uses these types of rates or plans.

R590-127-3. Scope.

This rule applies to all insurers licensed to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance and workers' compensation insurance, as defined in Section 31A-1-103.

R590-127-4. Definitions.

This rule is concerned with terminology which is commonly used in the insurance industry but for which no decisive definitions have been established. To promote understanding, some explanation is required.

Manual classifications, prospective loss costs and rates are developed by pooling vast amounts of statistical data. They are, by nature, average. For many types of risks there does not exist enough statistical data to develop credible prospective loss costs, manual rates and classifications. Over time the industry has developed ways of dealing with these unconventional risks. The procedure for rating an exposure that does not have a published prospective loss cost or manual rate is termed "(a) rating". The term is derived from the fact that the manual contains the symbol "(a)" or the words "refer to company" opposite the applicable code number instead of a specific dollar and cent rate. There are generally three types of situations which require (a) rates: (1) For a class in which the risks are so different from each other that no single manual rate could be representative of all of them; (2) where a class does not develop enough experience to warrant any credibility for ratemaking purposes; or (3) risks that involve a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes.

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-103, and in addition, the following:

(1) "(a) rate" means a rating rule or a rate expressed as the symbol "(a)" or the words "refer to company" listed opposite a classification code on the manual rule and rate pages of the Commercial Lines Manual.

(2) "(a) rating," special risk rating, means the procedure an underwriter uses for classifying and rating any risk which presents unique or unusual conditions, exposures or hazards for which he feels a commercial lines manual classification or rate is not appropriate.

(3) "Commercial Lines Manual" means the manual of rates, classifications and underwriting rules for commercial lines insurance, including the plan known as the Highly Protected Risk Plan, filed with the commissioner by the Insurance Services Office, Inc. For the purpose of this rule, this term shall include any similar rating plan or manual, including Highly Protected Risk Plans or large risk property rating plans, filed with the commissioner by other rate service organizations or individual insurers.

(4) "Excess Insurance" means a coverage designed to be in excess over one or more primary coverages or a Self-Insured Retention and which does not pay a loss until the loss amount exceeds a certain sum.

(5) "Guide (a) Rates" means advisory (a) rates that have been developed by rate service organizations or company home office underwriters. They represent a rough average and are used as guides or signposts.

(6) "Guide (a) Manual" means a collection of Guide (a) Rates with rules and procedures for their use.

(7) "Increased Limits Factor" means a rating factor used to adjust a manual rate to limits higher than the basic manual limits.

(8) "Individual Risk Filing" means a filing of the insurance policy of an individual risk which is submitted to the commissioner. It shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, the underwriter's explanation for the filing, premium development, and the appropriate filing transmittal forms and filing fee.

(9) "Self-Insured Retention" means that portion of a risk or potential loss which is assumed by an insured. It may be in the form of a deductible, self-insurance, or no insurance. For the purpose of this rule, "self-insured retention" is limited to amounts of at least $50,000 or more.

(10) "Umbrella Liability Insurance" means a coverage basically affording high limit coverage in excess of the limits of the primary policies as well as additional liability coverages. These additional coverages are usually subject to a substantial self-insured retention. The term "umbrella" is derived from the fact that it is a separate policy over and above any other basic liability policies the insured may have.

R590-127-5. Filing of Procedures.

Each insurer to which this rule applies shall maintain on file with the commissioner a general statement of company policies and procedures for underwriting and developing (a) rates and (a) rating. This statement shall include a delineation of the extent of home office and branch office authority with

regards to the promulgation of (a) rates. This statement should include any formal guidelines established by the insurer for these situations. Any changes in general policy made subsequent to this initial filing will be subject to filing at the time of the change.

R590-127-6. (a) Rates.

(1) All (a) rates shall be exempt from the filing requirements of Section 31A-19-203.

(2) Whenever an (a) rate is used the underwriting file shall contain full and supporting factual documentation verifying that it is an (a) rate as defined and showing the development of the (a) rate assigned by the underwriter:

(a) If the insurer has a Guide (a) Manual, the underwriter must start with the Guide (a) Rate suggested in the manual. If the underwriter feels adjustments to the suggested rate are appropriate, he shall document the steps in the development of the adjusted rate and show that he has followed the insurer's established procedure in the (a) rate development.

(b) If no Guide (a) Rate is available, the underwriter shall document the steps in the development of the (a) rate. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(c) As individual risk experience and characteristics are considered by the underwriter in developing the (a) rate, the only rate modification factors that may be applied to an (a) rate are Increased Limits Factors, package factors, premium size factors, expense modification factors and deductible factors. If automated rating procedures automatically apply other modification factors, this fact should be considered in the development of the initial rate.

(3) If an underwriter determines to use an Increased Limits Factor which is different from the Guide (a) Increased Limits Factors of the Commercial Lines Manual, the underwriting file shall contain full and supporting factual data justifying the change in the Guide (a) Increased Limits Factor.

(4) Whenever an insurer renews a risk which contains (a) rates the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rate assigned and justification for the continuation of the (a) rate or the development of any new (a) rate. If the (a) rate previously assigned is revised more than +/- 25%, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the (a) rate development for the prior year and the development and explanation for the new (a) rate.

R590-127-7. (a) Rating, Special Risk Rating.

(1) Rates that are developed by an underwriter through an (a) rating process are exempt from the filing requirements of Section 31A-19a-203.

(2) An underwriter is permitted to use (a) rating only in the following circumstances:

(a) When it can be clearly demonstrated that a risk described by specific classifications in the Commercial Lines Manual presents unique or unusual conditions of exposure or hazard such that the application of the normal manual rate for that classification does not produce a reasonable and equitable rate for the risk. The underwriter should bear in mind that manual classifications are understood to be general in nature and, thus, may not exactly describe the risk being considered. For this reason (a) rating is not to be used simply because the risk does not exactly match the manual classification description, but must be substantially different.

(b) When the coverage to be written is broader or more restricted than that provided for by the manual definition of coverage as limited by applicable manual exclusions.

(c) When the insurer has developed a program for types of risks or coverages that are not included in the Commercial Lines Manual and for which there is limited statistical data for ratemaking purposes. or

(d) When a risk develops more than $100,000 in annual manual basic limits unmodified premium for automobile liability, general liability, glass and theft insurance, individually, or $250,000 in any combination. Boiler and machinery risks may be (a) rated provided the one-year deposit premium charged for the coverages afforded is $50,000 or more.

(3) Whenever an underwriter uses (a) rating (special risk rating) the underwriting file shall contain a full explanation showing that the risk fits one of the circumstances described in Subsection (2). The file shall also contain full and supporting factual documentation showing the development of the rates assigned by the underwriter. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(4) Whenever an insurer renews a risk which has been (a) rated according to this section, the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rating and justification for the continuation of the (a) rating. Except for changes in premium basis, if the (a) rating produces a renewal premium which varies more than +/- 25% from the expiring policy premium, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the rate development for the prior term and the renewal term and an explanation for the change in premium.

R590-127-8. Commercial Excess and Umbrella Liability Insurance.

(1) Rates and rating plans for commercial excess insurance and umbrella liability insurance are exempt from the filing requirements of Section 31A-19a-203.

(2) The underwriting files of all excess insurance and umbrella liability insurance risks must contain full and supporting factual documentation justifying the rate and showing the development of the rate. This development should contain an analysis of such things as the specific definable loss potential characteristics with regards to its excess exposure and any other pertinent underwriting criteria.

(3) Whenever an insurer renews a commercial excess or

umbrella liability policy the underwriting file shall contain documentation of the underwriter's reevaluation of the rate assigned and justification for the continuation of the rate or the development of any new rate.

R590-127-9. Penalties.

Failure to comply with this rule and to maintain the documentation as outlined shall be deemed a violation of this rule. Pursuant to Section 31A-2-308, any person found to be in violation shall forfeit to the state not more than $1,000 for each violation.

R590-127-10. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

KEY: insurance companies
December 14, 1999 **31A-2-201**
Notice of Continuation October 14, 1999 **31A-19-103**

R590. Insurance, Administration.
R590-167. Individual and Small Employer Health Insurance Rule.
R590-167-1. Statement of Purpose and Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, Utah Code Annotated, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(1), 31A-2-201(3)(a) and 31A-30-106(1)(k). The general purposes of the Act and this rule are to enhance the availability of health insurance coverage to individuals and small employers; to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans; to ensure renewability of coverage; to establish limitations on the use of preexisting condition exclusions; to provide for portability; and to improve the overall fairness and efficiency of the individual and small employer health insurance market.

The Act and this rule are intended to promote broader spreading of risk in the individual and small employer marketplace. The Act and rule are intended to regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers. Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

As used in this rule:

A. "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(1) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(2) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

B. "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

C. "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer group or of any member of a small employer group.

D. "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

E. Other terms retain the definitions in 31A-30-103.

R590-167-3. Applicability and Scope.

A. This rule shall apply to any health benefit plan which:

(1) meets one or more of the conditions set forth in 31A-30-104(1);

(2) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(3) is in effect on or after the effective date of this rule.

B. The provisions of this rule shall apply to a health benefit plan provided to an individual, a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.

C.(1)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subparagraph (a), the provisions of the paragraph shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(2) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

D. A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

A. A covered carrier that establishes more than one class of business pursuant to the provisions of 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(1) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(2) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in 31A-30-105; and

(3) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

B. A carrier may not directly or indirectly use group size

as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

A.(1) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless:

(a) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(b) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

(c) the transaction otherwise meets the requirements of this section.

(2) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation and/or risk of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(3)(a) The filing required under Subsection (A)(2) shall:

(i) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(ii) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection C, or will incorporate them into an existing class of business, pursuant to Subsection D. If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(iii) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(iv) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(v) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(vi) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(vii) include any other information required by the commissioner.

(b) A covered carrier required to make a filing under Subsection (A)(2) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection (A)(2) and shall include at least the information specified in Subparagraph (a) for the individual or small employer health benefit plans in that state.

(4) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

(a) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection (A)(3) for the health benefit plans covering individuals and small employers in this state.

(b) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to 31A-30-105(3) seeking an extended transition period.

(c) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subparagraph (b).

(d) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve (12) months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

B.(1) Except as provided in Subsection (B)(2), a covered carrier may not cede or assume the entire insurance obligation and/or risk for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(2) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(a) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(b) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

C. Except as provided in Subsection D, a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

D. A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in 31A-30-105 relating to the maximum number of

classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

(1) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the fifteen-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(2) The transfers authorized in Subsection (D)(1) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

(3) A covered carrier making a transfer pursuant to Subsection (D)(1) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(4) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection (D)(1). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(5) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of 31A-30-106(2).

E. An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

F. The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

G. Nothing in this section or in the Act is intended to:

(1) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in 31A-14-213, of the ceding or assuming carrier related to the transaction;

(2) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(3) reduce or diminish the protections related to an assumption reinsurance transaction provided in 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

A.(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in this paragraph. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Section 31A-30-106.

(c) For the purpose of this section a change in rating method shall mean:

(i) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(ii) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(iii) change in the method of allocating expenses among health benefit plans in a class of business; or

(iv) change in a rating factor with respect to any case

characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

B.(1) The rate manual developed pursuant to Subsection A shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(2) A covered carrier may not use case characteristics other than those specified in 31A-30-106(1)(j) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection A(2).

(3) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(4) The rate manual developed pursuant to Subsection A shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(5) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of the small employer groups that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employer groups that choose or are expected to choose a particular health benefit plan.

(6) The rate manual developed pursuant to Subsection A shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the individual or small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of 31A-30-106, to reflect the risk characteristics of the group.

(7)(a) Except as provided in Subparagraph (b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect a health benefit plan, but only one fee with respect to such plan, provided the fee is no more than $5 per month per employee and is applied in a uniform manner to each health benefit plan in a class of business.

(8) Each rate manual developed pursuant to Subsection A shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

C. If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

D. The restrictions related to changes in premium rates in 31A-30-106(1)(c) and 31A-30-106(1)(h) shall be applied as follows:

(1) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(2)(a) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of 31A-30-106(1)(c) and 31A-30-106(1)(h).

(b) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of 31A-30-106(1)(c) and 31A-30-106(1)(h).

(3) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(4) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

E.(1) Except as provided in Subsections (E)(2) through (4), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(a) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(b) one plus the sum of:

(i) the risk load applicable to the individual or small employer during the previous rating period; and

(ii) 15% prorated for periods of less than one year.

(2) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(a) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(b) one plus the lesser of:

(i) the change in the base rate; or

(ii) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(c) one plus the sum of:

(i) the risk load applicable to the individual or small employer during the previous rating period; and

(ii) 15%, prorated for periods of less than one year.

(3) In the case of a health benefit plan described in 31A-30-106(1)(f), if the current premium rate for the health benefit plan exceeds the ranges set forth in 31A-30-106(1), the formulae set forth in Subsections (E)(1) and (2) will be applied as if the 15% adjustment provided in Subsection (E)(1)(b) and Subsection (E)(2) were a 0% adjustment.

(4) Notwithstanding the provisions of Subsections (E)(1) and (2), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in 31A-30-106(1)(b).

F.(1) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of 31A-30-106(1) with respect to such trust.

(2) A request made under Subsection (F)(1) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(a) adversely affect the participants and beneficiaries of the trust; and

(b) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(3) A waiver granted under 31A-30-104(3) may not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

A. A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to 31A-30-107(2) may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

B. In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under 31A-30-107(1)(f), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverages.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that would violate the provisions of 31A-30-107(4) and that was in force on the effective date of this rule may not remain in force beyond the first anniversary date of the health benefit plan subject to the restrictive provision that follows the effective date of this rule. A covered carrier shall provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section at least 30 days prior to the required change.

R590-167-10. Status of Carriers as Covered Carriers.

A. Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both.

B. Subject to Subsection C, a carrier may not offer health benefit plans to individuals and small employers, or continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state, unless the filing provided pursuant to Subsection A indicates that the carrier intends to operate as a covered carrier in this state.

C. If the filing made pursuant Subsection A indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(1) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(2) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier; and

(3) the carrier complies with the requirements of 31A-30-106(1)(k)(iii) and Sections 9 and 12 of this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers

whose coverage has been limited or restricted by the carrier.

D. If the filing made pursuant Subsection A indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection C, for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

A. The actuarial certification shall meet the following requirements:

(1) The actuarial certification shall be a written statement that meets the requirements of 31A-30, R590-167, and the Actuarial Standards Board including the provisions of Interpretative Opinion 3: Professional Communications of Actuaries regarding Actuarial Reports.

(2) The actuary must state that he or she meets the qualifications of 31A-30-103(1).

(3) The actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Section 31A-30-106, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans."

(4) The actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(5) The information described in Subsection A shall be filed no later than March 15 of each year.

B. For every health benefit plan subject to this rule, the carrier shall file with the commissioner the following:

(1) a copy of the applicable rating manual, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include both new business and renewal rates; and

(2) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include both new business and renewal rates.

(3) The information described in Subsection B shall be filed 30 days prior to use.

C. The carrier shall file with the commissioner the following:

(1) a list of every policy form to which the rule applies, that includes a description of how to find the applicable information in Subsection (B)(1) and (2) for each policy form.

(2) The information described in Subsection C shall be filed no later than March 15 of each year.

D. A covered carrier shall file annually the following information with the commissioner related to health benefit plans issued by the covered carrier to individuals or small employers in this state:

(1) the number of individuals and small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;

(2) the number of individuals and small employers that were not issued due to underwriting rules;

(3) the number of individual and small employer health benefit plans in force in each zip code of the state as of December 31 of the previous calendar year;

(4) the number of individual and small employer health benefit plans that were voluntarily not renewed by individuals and small employers in the previous calendar year, including termination for non-payment of the required premium;

(5) the number of individual market health benefit plans and small employer market health benefit plans terminated or nonrenewed, for reasons other than nonpayment of premium, by the carrier in the previous calendar year categorized as:

(a) fraud or misrepresentation of the employer or insureds;

(b) noncompliance with the carrier's minimum participation requirements;

(c) noncompliance with the carrier's employer contribution requirements;

(d) misuse of a provider network provision; or

(e) election to nonrenew all health benefit plans issued to individuals and small employers in this state.

(6) The number of individual and small employer health benefit plans that were issued to individuals and small employers that were uninsured for at least the three months prior to issue.

(7) Total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of December 31 of the previous calendar year.

(8) The information described in Subsection D. shall be filed no later than March 15 of each year in the format provided in Appendix I, Statistical Report, published 1-12-99. This appendix is available at the Insurance Department and is incorporated herein.

E. A covered carrier shall file by August 15 of each year, the total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of June 30 of the current calendar year.

R590-167-12. Severability.

A. If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: insurance
March 11, 1999 **31A-30-106**
Notice of Continuation December 14, 1999

R590. Insurance, Administration.
R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.
R590-194-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah which contain major medical benefits.

(2) This rules does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment(DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declare to be severable.

KEY: insurance law
December 1, 1999 **31A-2-201**
31A-22-614.5
31A-22-623

R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.

R608-1. Utah Fair Housing Rules.

R608-1-1. Authority and Purpose.

Pursuant to Section 57-21-8(2)(a), the Utah Labor Commission adopts this rule to establish the procedures necessary to implement the Utah Fair Housing Act.

R608-1-2. Definitions.

The following definitions are in addition to the definitions set forth in Section 57-21-2 of the Utah Fair Housing Act

A. "Act" means the Utah Fair Housing Act, Chapter 21, Title 57.

B. "Commissioner" means the Commissioner of the Utah Labor Commission.

C. "Complaint" means an allegation of an unlawful housing practice, filed with the Division in compliance with these rules. "Complaint" includes amended or supplemental complaints.

D. "Court" means the district court in the judicial district of the state of Utah in which the asserted unfair housing practice occurred, or if this court is not in session at that time, then any judge of any court.

E. "Unlawful housing practice" means any discriminatory housing practice prohibited by the Act.

R608-1-3. Reliance on Federal Law.

The Division and Commission will rely on federal precedent in interpreting and applying the Act in circumstances where no authoritative Utah precedent exists.

R608-1-4. Computation of Time Limits.

A. A Determination, Order, or Notice required by the Act or this rule is deemed issued on the date on the face of the Determination, Order or Notice.

B. A complaint, response, request for reconsideration, or election is considered to be "filed" on the date it is received by the Division or Commission, whether by mail or by personal delivery. Each such document shall be date stamped by Division staff on the date of receipt.

C. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R608-1-5. Designation of Proceedings as Informal-Exception.

A. All proceedings pursuant to the Act and this rule are hereby designated as informal adjudicatory proceedings for purposes of the Utah Administrative Procedures Act, Title 63, Chapter 46b, except that proceedings before the Commission's Adjudication Division for de novo review of the Director's Determination and Order are formal proceedings.

B. Court proceedings are subject to the court's rules of procedure.

R608-1-6. Complaints-Filing-Time Limits-Amendment and Withdrawal.

A. Any person aggrieved by an unlawful housing practice may file a complaint with the Division.

1. The complaint must be in the form designated by the Division and verified by the complainant.

2. The complaint shall contain the complainant's concise statement setting forth, to the extent reasonably possible, the following information:

a. The specific basis for complainant's belief that an unlawful housing practice has occurred, with relevant dates, places and the names of any individual participating in the alleged unlawful housing practice;

b. The specific basis for the complainant's belief that the alleged conduct is subject to the Act; and the dates and places of such unlawful housing practices;

c. The specific damages the complainant believes he or she has suffered as a result of the unlawful housing practice.

B. Division staff shall be available during normal business hours to provide reasonable assistance to complainants in completing and filing complaints.

C. Pursuant to Section 57-21-9(1), the complaint must be filed with the Division within 180 days after the alleged unlawful housing practice occurred.

D. The Director shall permit a complaint to be reasonably and fairly amended or supplemented, either by the Division or by the complainant, in order to accomplish the purpose of the Act. Such amendment or supplement may include additional respondents identified in the investigation as persons engaged in the unlawful housing practice on which the complaint is based. Procedures for filing and processing an amended or supplemental complaint shall be the same as for filing an original complaint.

E. With the Director's approval, a complainant may withdraw a complaint at any time by submitting a signed request for withdrawal to the Division.

R608-1-7. Notice Requirements.

A. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the complainant, including:

1. The date the complaint was filed with the Division;

2. A copy of the complaint;

3. The time limits applicable to the complaint and investigation process;

4. A statement of the complainant's rights and obligations under the Act;

5. A statement of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

6. A statement advising the complainant that retaliation against any person, or individual associated with that person, who is filing, testifying, assisting, or participating in an investigation, conciliation or administrative proceeding, is a

discriminatory housing practice prohibited by the Act; and

7. A statement, if applicable, that the terms of any rental agreement remain in effect.

B. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the respondent, which notice shall include:

1. Identification of the alleged unlawful housing practice on which the complaint is based;

2. The date the complaint was filed with the Division;

3. A copy of the complaint;

4. A statement of time limits applicable to the complaint and investigation process;

5. A statement of the respondent's rights and obligations under the Act, including respondent's obligation to submit a response to the complaint, as required by R608-1-8.

6. A statement informing the respondent of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

7. A statement advising the respondent that retaliation against any person, or individual associated with that person, who is filing a complaint, testifying, assisting, or participating in an investigation, conciliation, or administrative proceeding, is a discriminatory housing practice prohibited by the Act.

R608-1-8. Response to Complaint.

A. A respondent shall file a signed response to the complaint with the Division within 20 days from the date of the notice required by R608-1-7.B.

B. The response must address each allegation contained in the complaint, including any available and relevant data and information regarding respondent's business practices.

C. Division staff shall be available during normal business hours to provide reasonable assistance to respondents in completing and filing responses.

D. Failure to file a response may result in the Division concluding its investigation based on information provided by the complainant and such other information as is reasonably available to the Division. Alternatively, the Commission may use its subpoena powers to compel production of the information required by this rule.

R608-1-9. Investigation-Report.

A. Within 30 days of the filing of a complaint, the Division shall commence proceedings to throughly investigate and, if possible, conciliate the complaint.

B. The Division shall complete its investigation within 100 days after filing of a complaint. If the Division is unable to do, it shall notify the parties in writing of the reason for the delay.

C. The Division may, with reasonable notice to the parties, conduct on-site visits, interviews, and fact-finding conferences, and take such other action as is reasonably necessary to investigate the complaint. Pursuant to Section 57-21-8(2)(c) of the Act, the Commission may issue subpoenas to compel production of necessary evidence. Additionally, a party's unjustified failure to cooperate with the Division's reasonable investigative requests may result in the Division concluding its investigation based on such other information as is available to the Division.

D. The Division shall prepare a final investigative report on each complaint, which shall include:

1. A summary of all contacts with complainants and respondents, including the dates of such contacts;

2. A summary of contacts with witnesses, including the dates of contact; and

3. A summary of pertinent records.

R608-1-10. Determination.

A. On completion of the investigation, the Director shall review the investigative report and determine whether reasonable cause exists to believe that an unlawful housing practice has occurred.

B. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, the Director shall issue a determination dismissing the complaint. The complainant may then take such other action as described in R608-1-12.

C. If the Director finds reasonable cause to believe that an unlawful housing practice has occurred, the Director shall take such further action as described in Rule R608-1-13.

R608-1-11. Conciliation.

A. During the period beginning with the filing of the complaint and ending with the Director's determination, the Division shall, to the extent feasible, engage in conciliation to settle the matter or, in accordance with HUD procedures, enter into an enforcement agreement.

1. Conciliation proceedings are confidential pursuant to Section 57-21-9(7)(a).

2. Any conciliation agreement shall be subject to approval by the Director.

3. Any party can enforce the signed and approved conciliation agreement in court proceedings.

B. Nothing in these rules prevents complainants and respondents from settling a complaint through their own efforts. However, the Division will not dismiss the complaint until the parties' settlement agreement has been submitted to, and approved by, the Director.

R608-1-12. Order of Dismissal-Reconsideration-Right to Private Civil Action.

A. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, or is about to occur, the Director shall issue a Determination and Order dismissing the Complaint.

B. The complainant may ask the Director to reconsider such order of dismissal by complying with the requirements of Section 63-46b-13 of the Utah Administrative Procedures Act.

C. The Director shall issue a decision either granting or denying the request for reconsideration.

1. If the Director grants reconsideration, the Director shall reopen the investigation, amend the Director's prior Determination and Order, or take such other necessary action.

2. If the Director denies reconsideration, the Director's Determination and Order is not subject to any additional agency or judicial review. However, the complainant may commence a private civil action pursuant to Section 57-21-12(1).

R608-1-13. Order Finding Unlawful Housing Practice-Appeal-Choice of Forum.

A. If the Director concludes that an unlawful housing practice has occurred, the Division shall informally attempt to eliminate or correct the unlawful housing practice by conducting a conciliation conference pursuant to R608-1-11.

B. If conciliation is unsuccessful, the Director shall issue a determination ordering appropriate relief as authorized by Section 57-21-11. The Director's determination shall be made public unless the Director determines that the matter involves a privacy interest entitled to protection by law, or that disclosure is not required to further the purposes of the Act.

C. A respondent disagreeing with the Director's determination may obtain de novo review by filing a written request for review with the Director within 30 days from the date the Director's determination.

1. If no timely request for de novo review is filed, the Director's determination is the Commission's final order and not subject to additional agency or judicial review.

2. If a timely request for de novo review is filed, the Director shall:

a. Notify the parties of such request for review by regular mail at their last known address of record; and

b. Inform the parties that the review proceeding will be conducted by the Commission's Adjudication Division unless any party elects to have such review conducted in court.

3. Any election for court review must be received by the Director within 20 days of the date of mailing of the Director's notice.

R608-1-14. Representation of Complainants.

A. If a respondent has requested de novo review of the Director's Determination, the Commission shall consider whether the Determination is supported by substantial evidence.

B. If the Commission concludes the Determination is supported by substantial evidence, the Commission shall provide legal representation to support the Determination in the de novo review proceeding.

C. If the Commission concludes the Determination is not supported by substantial evidence, the Commission shall not provide legal representation to support the Determination in the de novo review proceeding.

D. The Commission shall notify the parties of its conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination within twenty days from the date the respondent files a request for de novo review.

E. The Commission's conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination is not subject to further agency or judicial review.

R608-1-15. Procedures For De novo Review.

A. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted by the Commission's Adjudication Division, the following standards apply:

1. The Division shall refer the matter to the Adjudication Division, which shall designate an Administrative Law Judge to serve as presiding officer;

2. The proceeding shall be conducted as a formal agency adjudicative proceeding pursuant to the relevant provisions of the Utah Administrative Procedures Act, Chapter 46b, Title 63;

3. Within 30 days from referral, the Administrative Law Judge shall schedule an evidentiary hearing to be held within 120 days of the referral, unless it is impracticable to do so;

4. Any aggrieved party may intervene in the action;

5. The Commission shall make final administrative disposition of the complaint within one year after the complaint is filed unless it is impracticable to do so. If the agency is unable to make a final administrative disposition within one year, the Commission shall notify the parties in writing of the reason for the delay.

B. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted in court, the following standards apply:

1. If, pursuant to Rule R608-1-14, the Commission has concluded the Director's Determination is supported by substantial evidence, the Commission shall commence a court action to support the Determination. Such action shall be commenced within 30 days from the date of the election for court review.

2. If, pursuant to Rule R608-1-14, the Commission has concluded the Determination is not supported by substantial evidence, the Commission shall not commence a court action to support the Determination. In such case, the complainant may commence a civil action in a court of competent jurisdiction as provided by the Act.

R608-1-16. Declaratory Orders.

A. Purpose. As required by Section 63-46b-21, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. Petition Form and Filing.

1. The petition shall be addressed and delivered to the Director who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. clearly identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during normal business hours;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

C. Review.

1. the agency shall not review a petition for a Declaratory Order that is:

a. not within the jurisdiction and competency of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

2. The Director shall promptly review and consider the

petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with law that the agency deems necessary to provide adequate review and due consideration of the petition.

3. The Director may issue a Declaratory Order pursuant to Section 63-46b-21(6).

D. Administrative Review.

1. Administrative review of the Director's Declaratory Order shall be conducted pursuant to Section 63-46b-13.

KEY: housing, fair housing, discrimination, time
December 2, 1999 57-21-1 et seq.
Notice of Continuation May 12, 1997 63-46b-1 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.

R610-3. Filing, Investigation, and Resolution of Wage Claims.

R610-3-1. Authority.

This rule is enacted under the authority of Sections 34-23-104, 34-28-9, 34-28-19 and 34-40-105.

R610-3-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Sections 34-23-103, 34-28-2, and 34-40-102.

A. "Claim" means a properly completed Wage Claim Assignment Form, filed with the Division by a wage claimant.

B. "Claimant" means a person making a claim, as stated in subsection A.

C. "Commission" means the Labor Commission.

D. "Defendant" means a person against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and the personnel responsible for receiving, investigating and resolving claims.

G. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

H. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

I. "Mail" or "Mailed" means first class mailing sent to the parties of a wage claim or claim of retaliation, to the last known address on the Commission's record.

J. "Presiding Officer" includes those defended by Section 63-46b-2(1)(h)(i).

R610-3-3. Exceptions.

Public, general agricultural, household domestic, and certain other employments are excepted from the provisions of these rules pursuant to Section 34-28-1.

R610-3-4. Filing Procedure and Commencement of Agency Action.

A. For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63-46b-3(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

a. vacation;

b. holiday;

c. sick leave;

d. paid time off; and

e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature notarized before a notary public.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

1. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

R610-3-5. Investigation.

For the purpose of determining the validity or invalidity of the filed claim, the Division pursuant to Sections 34-28-9 and 34-28-10, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the claim;

C. Examine, copy, inspect, and summarize relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the claim;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make relevant inquiries necessary in making a preliminary decision.

R610-3-6. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the claim, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the claim and state the findings based on the information contained in the wage claim file.

1. If the claim has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which shall be complied with within ten working days from the date of the document.

2. If the claim has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the claim is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. A party may submit a request for review or request an informal hearing. This request shall be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D. precludes a review or hearing.

R610-3-7. Default Order.

A. A hearing officer may issue an Order On Default And Order To Pay based on the Preliminary Finding issued by the Division.

B. An Order On Default And Order To Pay may be issued following an investigation and bypassing a Preliminary Finding if any of the following occur:

1. The Claimant is issued a non-negotiable check in the payment of wages in violation of Section 34-28-3(2).

2. The Defendant admits the validity of the claim.

3. The Defendant failed to respond to the allegations of the claim within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. The penalty provided for by Section 34-28-9(2) may be awarded in addition to the award for wages.

D. After issuance of the Order On Default And Order To Pay, the only agency review available is that specified in R610-3-11.

R610-3-8. Agreements and Settlements.

A. No provision of Title 34, Chapter 28, can be contravened by a mutual agreement between an employee and employer unless the agreement is approved by the Division.

B. Notice of settlement conference shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the conference. A continuance shall only be granted for good cause, at the option of the hearing officer.

C. In the event of settlement the parties shall sign a settlement agreement stating the terms of the settlement, and shall include:

1. A stipulation that in the event of breach of the agreement the Division may enter an Order enforcing the settlement agreement; and

2. Approval of the settlement agreement by a representative designated by the Division.

R610-3-9. Hearings.

A. Pursuant to Section 63-46b-4(1), the Division may resolve the claim for wages filed pursuant to R610-3-4 by holding an informal hearing subject to the provisions of Section 63-46b-5. This hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

B. Where the Division deems appropriate or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the hearing and shall specify if the hearing is an informal or a formal proceeding. Notice of hearing shall be mailed and shall constitute proper notice.

D. A continuance shall only be granted for good cause at the option of the hearing officer.

E. The hearing officer may at his or her option record a hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63-46b-5, and shall be promptly mailed to each of the parties. The Order issued may be:

1. An Order awarding payment to the Claimant and may include a penalty pursuant to Section 34-28-9(2), in addition to the wages determined due.

2. An Order For Dismissal terminating proceedings on the wage claim by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in R610-3-11.

R610-3-10. Attorney Fees.

A. Attorney fees and costs, in addition to the award for wages, shall be allowed in an Order for Payment and in an Order on Default and Order to Pay pursuant to Section 34-28-9(4)(b). Attorney fees shall be allowed in the amount of $300 or one-third of the award, whichever is greater.

B. Reasonable attorney fees may be awarded private counsel pursuant to Section 34-28-13 for representing a claimant before the Commission.

R610-3-11. Agency Review.

A. After issuance of an Order On Default And Order To Pay or of a hearing officer's Order, the only agency review available to a party is a request for reconsideration as specified in Section 63-46b-13.

B. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63-46b-13(3).

R610-3-12. Judicial Review.

Judicial review of a wage claim Order is pursuant to

Section 63-46b-15.

R610-3-13. Declaratory Orders.

As required by Section 63-46b-21, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Section 63-46b-21(6).

D. Administrative review of the Declaratory Order is per Section 63-46b-13, only.

R610-3-14. Enforcement.

A. Docketing of Order or final agency action as a lien.

1. An abstract of the final Order shall be docketed by the Division in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract shall be noted thereon and entered in the judgment docket pursuant to Section 34-28-9(3)(a), (b), and (c).

2. The docketing of an Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of an Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final Order is docketed, shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-3-15. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing a period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

R610-3-16. Retaliation.

A. Section 34-28-19(1) prohibits an employer from retaliating against employees. Claims of unlawful retaliation shall be resolved as follows:

1. An employee aggrieved by an employer's retaliatory action may file a complaint with the Division. The Division shall mail a copy of the complaint to the employer and allow ten working days for the employer to submit a written response to the complaint. Additionally, the Division may attempt to resolve the complaint by informal means.

2. After the time allowed for response and if informal resolution has been unsuccessful, the Division shall determine whether the employer has violated Section 34-28-19 by retaliating against the employee. The Division's determination shall be mailed to each party.

a. If the Division determines that no retaliation has occurred, it shall dismiss the employee's complaint. If the employee disagrees with the Division's determination that no retaliation has occurred, the employee may file a request for hearing with the Division within 15 days, and the Division shall then refer the matter to the Division of Adjudication for a full hearing.

b. If the Division determines retaliation has occurred, it shall require the employer to cease and desist the retaliatory action and to reimburse the employee within 15 days for lost wages and benefits. If, the employer fails to stop its retaliation or fails to reimburse the aggrieved employee, the Division shall

refer the matter to the Division of Adjudication for a full hearing of the retaliation claim.

B. The Division's initial determination pursuant to Section 34-28-19(2) is advisory only and therefore is not subject to the provisions of the Utah Administrative Procedures Act, Sections 63-46b-1 et seq. However, hearings conducted by the Division of Adjudication on issues of retaliation are subject to the Utah Administrative Procedures Act and shall be conducted as formal hearings.

R610-3-17. Bankruptcy.

In the event the defendant files a petition with the U.S. Bankruptcy Court, the Division shall suspend its administrative action until the bankruptcy case is concluded or dismissed.

R610-3-18. Deductions and Offsets.

The following sums shall constitute lawful deductions or offsets from wages due an employee:

A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;

B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;

C. Sums deducted from wages pursuant to any Utah city, county, or state tax;

D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, savings, loan, trust or other financial institution, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:

1. Employee has actual or constructive possession of the goods or services purchased; and

2. Employee's purchase is evidenced by the employee's written acknowledgment;

G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:

1. A potential deduction shall meet the following pre-conditions:

a. negligence and damages arise out of the course of employment;

b. employer has not received payments, compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;

c. offset is reasonably related to the amount of the damage; and

d. damage is over and above wear and tear reasonably expected in the normal course of business.

2. Methods of determining an employee's negligence and amount of damage are:

a. by a judicial proceeding;

b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or

c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).

H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;

I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:

1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and

2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;

J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:

1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;

2. The crime occurred during the employment relationship or out of the employment relationship; and

3. The property of the employer cannot or has not been reunited with the employer; or

4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.

K. Sums deducted from the wages resulting from cash shortages, provided that the:

1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;

2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;

3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and

4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;

2. Employee has actual or constructive possession of the goods or items; and

3. Employer repurchase the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;

2. The employee gave written acknowledgment of the receipt of the item; and

3. The item was not returned to the employer upon termination.

R610-3-19. Timely and Unconditional Payment of Wages.

A. In case of a dispute over wages, the employer shall give written notice to the employee, of the amount of wages which he concedes to be due and shall pay that amount without condition within the time required by statute;

B. Acceptance by the employee of a payment made hereunder shall not constitute a release or waiver as to the balance of a claim for wages;

C. The employer shall not be entitled or permitted to deduct any sums where the employer has failed to make payment of wages within the time period required by statute.

R610-3-20. Check Stubs.

All lawful offsets enumerated in this rule shall be itemized on a statement or a detachable check stub and provided to the employee as required by Section 34-28-3(4).

R610-3-21. Uniforms.

A. Where the wearing of uniforms is a condition of employment, the employer shall furnish the uniforms free of charge.

1. The term "uniform" includes any article of clothing, footwear, or accessory of a distinctive design or color required by an employer to be worn by employees.

2. An article of clothing which is associated with a specific employer by virtue of an emblem (logo) or distinctive color scheme shall be considered a uniform.

B. The employer may request an amount, not to exceed the actual cost of the uniform or $20, whichever is less, as a deposit on each uniform required by the employer. The deposit shall be refunded to the employee at the time uniform is returned.

KEY: wages, minors*, labor, time

December 2, 1999	**34-23-101 et seq.**
Notice of Continuation February 3, 1997	**34-28-1 et seq.**
	34-40-101 et seq.
	63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 101.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's Relative Value Schedule. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Discontinuance of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify an employee of the discontinuance of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation stops for any reason.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Protection of Rights - Form 002" - Used by an injured employee for the sole purpose of protecting his/her rights even though a dispute does not exist. Copies are forwarded to all parties concerned. NOTE: THIS FORM DOES NOT NEED TO BE FILED WHEN ANY OTHER APPLICATION HAS BEEN FILED.

J. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth

certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

K. "Occupational Disease Claim of Employee - Form 026" - This form is used by an employee claiming benefits under the Utah Occupational Disease Act.

L. "Occupational Disease Claim of Dependent - Form 027" - This form is used by the dependent(s) of a deceased employee who died as a result of an occupational disease. All provisions of Section G above apply equally to this form.

M. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

N. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

O. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

P. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

Q. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

R. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

S. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Adjudication for approval.

T. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

U. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

V. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

W. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

X. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

Y. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those

instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Form 123 - Physician's Initial Report;
4. Doctor's report of impairment rating;
5. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. For claims arising from accident or disease prior to July 1, 1994, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

B. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

C. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

D. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

1. Is the claimant engaged in a substantial gainful activity?
2. Does the claimant have a medically severe impairment?
3. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?
4. Does the impairment prevent the claimant from doing past relevant work?
5. Does the impairment prevent the claimant from doing any other work?

E. After a tentative finding of permanent total disability, the applicant shall be referred to the Utah State Office of Rehabilitation for evaluation and rehabilitation work-up. If the Utah State Office of Rehabilitation determines that the applicant is unable to do any other work because of his age, education, and previous work experience, and as a result of an industrial accident, there shall be a hearing to review the determination of the Utah State Office of Rehabilitation and any objections thereto, unless the parties waive the right to a hearing.

F. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

R612-1-11. Burial Expenses.

Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $4,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

KEY: workers' compensation, time, administrative procedure, filing deadlines

December 2, 1999 **34A-2-101 et seq.**
Notice of Continuation November 24, 1997 **34A-3-101 et seq.**
34A-1-104 et seq.
63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-1. Authority.

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), the workers' compensation premium rates effective January 1, 2000, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund;
2. 9.25% for the Employers' Reinsurance Fund;
3. 0.25% for the workplace safety account.

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
December 2, 1999 59-9-101(2)
Notice of Continuation December 19, 1996

R616. Labor Commission, Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (1998)

1. Section I Rules for Construction of Power Boilers and the 1999 Addenda, published July 1, 1999

2. Section IV Rules for Construction of Heating Boilers and the 1999 Addenda, published July 1, 1999

3. Section VIII Rules for Construction of Pressure Vessels and the 1999 Addenda, published July 1, 1999

B. Power Piping ASME B31.1 (1998)

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998

D. National Board Inspection Code ANSI/NB-23 (1998)

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997)

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995)

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997) and the 1998 Addenda, published December 1998

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of

employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiences and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-10, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers*, certification, safety
December 2, 1999 34A-7-101 et seq.
Notice of Continuation February 5, 1997

R623. Lieutenant Governor, Elections.

R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.

R623-1-1. Purpose.

Pursuant to Utah Code Section 36-11-404 this rule provides procedures for the lieutenant governor's office to:

A. Issue lobbyist licenses;

B. Disapprove lobbyist applications;

C. Suspend and revoke lobbyist licenses;

D. Reinstate lobbyist licenses; and

E. Appoint administrative law judges.

R623-1-2. Authority.

This rule is required by Utah Code Section 36-11-404.

R623-1-3. Definitions.

In addition to the terms defined in Utah Code Section 36-11-102, the following definitions apply:

A. "Director" means the director of the state elections office.

B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.

C. "Report" means any report required under Sections 36-11-201 and 36-11-202.

R623-1-4. Registration/License Application Procedure.

A. In order to register and obtain a license, a lobbyist shall:

1. Obtain a registration form from the lieutenant governor's office;

2. Submit the completed form to the lieutenant governor's office; and

3. Pay the $25 registration fee.

B. Upon receipt of a lobbyist registration form the lieutenant governor's office shall:

1. Review all registration forms for accuracy, completeness and compliance with the law;

2. Approve or deny the registration/license application; and

3. Notify the lobbyist in writing within 30 days of approval or denial.

C. The lobbyist license shall become effective upon approval by the lieutenant governor's office.

R623-1-5. Disapproval of Application.

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-105, shall have his application for license denied by the lieutenant governor's office.

B. The lobbyist will receive written notice of the license denial from the lieutenant governor's office within 30 days.

R623-1-6. Suspensions, Revocations and Fines.

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Subsection 36-11-105(2)(a)(ii)(B), Sections 36-11-201 and 36-11-202:

a. Failure to register;

b. Late filing of a year end or supplemental report;

c. Failure to file a year end or supplemental report;

d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to the failure to list all principals for which the lobbyist works or is hired as an independent contractor;

e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or

f. Otherwise violating Sections 36-11-102, 36-11-20,1 or 36-11-202.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections 36-11-301, 36-11-302, or 36-11-303, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(3) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of violation any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(2), suspension or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.

R623-1-7. Enforcement.

A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.

B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).

C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.

1. Fines for late reports shall not be less than $50 per day the report is late.

2. Extenuating circumstances may be considered before a penalty is imposed.

3. Hearings shall not be available to dispute late report violations.

D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.

E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights.

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;

2. The president of the senate;

3. The governor; and

4. All principals for which the lobbyist works or is hired as an independent contractor, as listed on the lobbyist registration form.

R623-1-8. Hearings, Appointment of Administrative Law Judges.

A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.

B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.

R623-1-9. Reinstatement of a Lobbyist License.

A. A lobbyist whose license is suspended or revoked may apply for reinstatement as provided by Section 36-11-402.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed and the reinstatement fee provided by Section 36-11-402.

KEY: lobbyist
January 1, 2000 **36-11-404**

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.
"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.
"Natural and Cultural Resources" means those features and values including all lands, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.
"Park area" means any individual park property in the park system.

R651-601-7. Manager.
"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.
"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.
"Permit" means written authorization by a park representative.

R651-601-10. Posted.
"Posted" means displayed printed instruction or information.

R651-601-11. Person.
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

KEY: parks
December 2, 1999 **63-11-17(2)(b)**
Notice of Continuation June 29, 1999

R651. Natural Resources, Parks and Recreation.
R651-603. Animals.
R651-603-1. Pets.

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter deposited by their pets/animals within the park area.

R651-603-2. Animal Exclusions.

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 26-30-2.

R651-603-3. Unattended Animal.

Leaving any animal unattended is prohibited except by permit.

R651-603-4. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-5. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

R651-603-6. Livestock.

Allowing livestock to graze or be on any lands within the park system is prohibited except by permit.

R651-603-7. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-8. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-9. Horse Use within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks
December 2, 1999 **63-11-17(2)(b)**
Notice of Continuation June 29, 1999

R651. Natural Resources, Parks and Recreation.
R651-610. Expulsion.
R651-610-1. Violation of Rules.

Any person or persons who are in violation of any rules promulgated under Section 63-11-17 may be expelled from the park area by a ranger or other law enforcement officer, and prohibited from returning for 48 hours.

KEY: parks, fees
December 2, 1999 63-11-17(2)(b)
Notice of Continuation June 29, 1999

R651. Natural Resources, Parks and Recreation.
R651-617. Permit Violation.
R651-617-1. Revocation or Suspension of Permit.

A permit may be revoked or suspended for a time, from a minimum of seven (7) days to a maximum of the duration of the permit by the division director or individual designated by the division director if one or more of the following actions are found to have occurred, based on their severity: (1) false or fictitious statements or qualifications were provided to obtain the permit; (2) the terms or conditions of the permit were violated; or (3) the permit holder allowed the permit to be used by an unauthorized person.

KEY: parks
December 2, 1999 **63-11-17(2)(b)**
Notice of Continuation June 29, 1999

R651. Natural Resources, Parks and Recreation.
R651-627. Swimming.
R651-627-1. Prohibited Swimming Areas.

Where posted, swimming is prohibited to promote safety, in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-2. Scuba Diving.

Scuba diving shall only be participated in when in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-3. Public Health Closures.

Swimming is prohibited when a public health closure has been posted by the park manager or other public health agency.

KEY: parks
December 2, 1999 **63-11-17(2)(b)**
Notice of Continuation June 29, 1999

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates paid by service end-users;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail","wholesale", or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements purchased from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements purchased from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Retail Provider -- means telecommunications corporations, interexchange carriers, resellers, alternate operator service providers, commercial mobile radio service providers, radio common carriers, aggregators or any other person or entity providing telecommunications services that are used or consumed by an consumer or end-user.

J. Trust Fund -- means the Trust Fund established by 54-8b-12.

K. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission.

L. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Transition From 54-8b-12 to 54-8b-15.

A. Phase out of 54-8b-12 Trust Fund and Transfer of Trust Fund Funds -- In order to permit telecommunications corporations to make the transition to the fund created by 54-8b-15 and this rule:

1. The 54-8b-12 Trust Fund mechanisms shall continue until May 31, 1998, upon which date they shall cease. Funds derived from these funding mechanisms will be deposited in the USF.

2. Balances remaining in the 54-8b-12 Trust Fund as of June 1, 1998, plus remittances of any funds pursuant to the 54-8b-12 Trust Fund shall be transferred to the USF.

B. Two-Year Continuation of Equivalent Trust Fund Funding -- Upon written notification to the Commission, telecommunications corporations that received 54-8b-12 Trust Fund support in 1997 may elect to receive support equivalent to what they would have received from the 54-8b-12 Trust Fund rather than support pursuant to the 54-8b-15 USF. These companies may continue to receive this Trust Fund equivalent support until December 31, 1999. During this time period, these companies may elect to end this equivalent support and begin to receive support pursuant to the 54-8b-15 USF by submitting a written notification to the Commission 30 days prior to the beginning of the 54-8b-15 USF support. Funds for equivalent Trust Fund support will be provided from the USF.

R746-360-4. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Annual Review -- The administrator, under the direction of the Commission, shall perform an annual review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-5. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed beginning January 1, 2000, shall equal 0.67 percent of billed intrastate retail rates.

R746-360-6. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Retail providers, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission within 45 days after the end of each month.

2. Retail providers eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-7. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible

telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-7A.1.,

a. Non-rate-of-return Incumbent telephone corporations shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-8. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active primary residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average primary residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active primary residential access lines in the designated support area, times the eligible telecommunications corporation's number of active primary residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-10. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations or potential customers not presently receiving service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

1. In considering the one-time distribution application, the Commission will examine relevant factors including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, the provisions for service or line extension currently available, and whether the one-time distribution is in the public interest.

B. Maximum Amount -- The maximum one-time distribution will be no more than that required to make the net investment equivalent to the relevant proxy model cost estimate for non-rate-of-return regulated telecommunications corporations or the relevant cost estimate for rate-of-return regulated telecommunications corporations.

C. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

D. Notice and Hearing -- Following notice that a one-time distribution application has been filed, a LEC may request a hearing or seek to intervene to protect its interests.

E. Bidding for Unserved Areas -- A telecommunications corporation will be selected to serve in an unserved area on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-11. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-12. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service*

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54-8b-15

R746. Public Service Commission, Administration.
R746-401. Rules Governing Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets by Certain Public Utilities.
R746-401-1. Applicability.

A. These rules shall apply to each gas corporation, electrical corporation, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer, except independent energy producers exempt under Section 54-2-1(16)(d), operating as a public utility in Utah under the jurisdiction of the Public Service Commission of Utah.

B. These rules shall not be applicable to the repair or replacement of existing utility assets, except as noted in Section R746-401-3.A.3.a.

C. Transactions shall not be artificially divided to avoid these reporting requirements.

D. These rules shall not limit the Commission's jurisdiction to review, at the Commission's discretion, transactions not specifically covered by these rules.

E. A utility may apply to the Commission for the modification of these rules or for temporary or permanent exemption from their requirements if unreasonable hardship results from their application.

R746-401-2. Definitions.

A. For purposes of these rules:

1. "Commission" shall mean the Public Service Commission of Utah.

2. "Gross investment in utility plant devoted to Utah service" shall mean the Utah allocated portion of the total of the following types of accounts: Plant in service, property under capital leases, plant purchased or sold, completed construction not classified, and experimental plant unclassified. The following types of accounts shall not be included: Plant leased to others, property held for future use, construction work in progress, and acquisition adjustments.

3. "Book cost" shall mean the amount at which an asset is recorded in the books of the utility without deduction for accrued depreciation, depletion, amortization, etc.

B. For purposes of these rules, public utilities are divided into the following categories:

1. Large utilities - a public utility serving an annual average of 20,000 or more customers or access lines in Utah as set forth in its most recent annual report on file with the Commission and wholesale electrical cooperatives.

2. Small utilities - a public utility serving less than an annual average of 20,000 customers or access lines in Utah as set forth in its most recent annual report on file with the Commission.

R746-401-3. Reporting Requirements.

A. Each public utility shall file a report with the Commission, at least 30 days prior to beginning construction (by the utility or contracted by the utility) or prior to the purchase or acquisition of the following utility assets and any other utility plant devoted to Utah service, the cost of which is in excess of the lesser of $10,000,000 or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission:

1. gas corporations --

a. any manufactured gas production facility, or liquids separation or sweetening plant facility, or gas reinjection plant facility.

b. any natural gas storage reservoir or liquified natural gas storage facility.

c. any natural gas transmission pipeline the size of which is:

i. large utilities - eight inches or greater in diameter and twenty (20) miles or more in length

ii. small utilities - four inches or greater in diameter and ten miles or more in length

2. electrical corporations, wholesale electrical cooperatives and independent energy producers --

a. any coal mine, uranium mine, geothermal well or other fuel source development

b. any electrical generating facility of ten megawatts or greater

c. any electrical transmission line ten miles or more in length and the design voltage of which is:

i. large utilities - 138 kilovolts or greater

ii. small utilities - 69 kilovolts or greater

3. telephone and telegraph corporations --

a. any new central office or complete replacement of an existing central office in Utah the size of which is:

i. large utilities - 5,000 or more access lines in service

ii. small utilities - 500 or more access lines in service

4. water corporations --

a. any water well or spring development

b. any water storage reservoir

c. any water transmission pipeline one mile or more in length

5. sewerage corporations --

a. any sewer treatment facility

b. any sewer transmission pipeline one mile or more in length

6. heat corporations --

a. any heat production facility

b. any heat transmission pipeline one-quarter mile or more in length

B. Each public utility shall file with the Commission, at least thirty (30) days prior to its being consummated, a report of the sale, transfer or other disposition by such utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars ($10,000,000) or five percent (5%) of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

C. Each public utility shall file with the Commission, at least thirty (30) days prior to its being placed into effect, a report of the construction, purchase, acquisition, sale, transfer or other disposition by such utility of nonutility assets having a book cost in excess of the lesser of twenty million dollars ($20,000,000) or ten percent (10%) of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the

Commission.

D. The utility shall file with the Commission an original and 12 copies of the report on each transaction described in the foregoing sections.

E. The report of each transaction shall contain, at a minimum, the following information:

1. The utility's name and address, and a brief description of the utility's service territory.

2. Description of the subject transaction, the purposes and reasons for the transaction, and the location and purposes of the subject assets.

3. Information to show that the utility has obtained or will obtain any required consent, franchise or permit from the proper county, city, or other public authority and any other necessary authorizations from the appropriate governmental bodies.

4. Dates assets are to be constructed, purchased or otherwise acquired, or sold, transferred or otherwise disposed of.

5. Estimated construction cost of the assets or book cost and accumulated depreciation, depletion or amortization of assets acquired, sold, transferred or disposed of.

6. Information to show that any proposed line, plant or system will not conflict with or adversely affect the operations of any existing certificated public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to any existing public utility which supplies the same product or service to the public.

7. Financial statements of the utility demonstrating adequate financial capacity to support the construction or acquisition of the proposed assets, and information concerning any proposed financing arrangements necessary to finance the proposed assets.

8. Estimated effect of the transaction on current utility rates and charges.

9. Such other information as the Commission may require.

F. Any report filed with the Commission shall be updated or supplemented in the event of significant changes in the subject transaction.

R746-401-4. Commission Action.

Reserved.

KEY: public utility, rules and procedure, contracts

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Notice of Continuation December 13, 1999	**54-4-7**

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that

is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue,

calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of

that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-

302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Registered Appraiser," "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practicums.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO);

f) Course G - Development and Use of Personal Property Schedules;

g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

h) Course I - Uniform Standards of Professional Appraisal Practice.

C. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst. The designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors. An assessor, county employee, or state employee must hold the appropriate designation listed below to gain the authority to value property for ad valorem taxation purposes.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and I, and a comprehensive residential field practicum, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

2. Ad Valorem General Real Property Appraiser:

a) Requires the successful completion of Courses A, B, C, D, E, and I, and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, G, and I, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E,

H, and I, and a comprehensive valuation practicum, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

D. Candidates must pass the final examination for each course with a grade of 70 points or more to be successful.

E. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

F. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

G. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

H. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

I. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 or more.

J. All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

K. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the standards set forth in Section 61-2b-27.

L. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific registration or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of D.3.a) or D.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, roll-back taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund

must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Section 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-16-13.

B. The Tax Commission adopts the following standards of assessment performance regarding assessment level and uniformity:

1. Upon completion by the Division of the annual Assessment/Sales Taxation Study, the Division shall issue a corrective action order for a property class or subclass if the measure of central tendency is not within 10 percent of the legal level of assessment or the 95 percent confidence interval of the

measure of central tendency does not contain the legal level of assessment.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The adjustment shall be calculated by dividing the legal level of assessment by the measure of central tendency when uniformity meets the standards in B.2., or by the 95 percent confidence interval limit nearest the legal level of assessment when the standards in B.2. are not met.

2. Corrective action for the property being appraised under the cyclical appraisal plan for a given year shall be ordered by the Division if the measure of dispersion is outside the following limits for the coefficient of dispersion (COD), or for the coefficient of variation (COV) when data are normally distributed:

a) In urban counties, the limit for the COD is 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property.

b) In rural counties, the limit for the COD is 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

c) The limit for the COV is 1.25 times the COD.

d) Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

e) If the sample size does not meet the requirements of B.3., or if there is reason to question the reliability of statistical data achieved under B.3., an alternate performance evaluation shall be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for use and collection of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties;

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

3. To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class or subclass, the acceptable sample size shall consist of 10 or more ratios.

a) To meet the minimum sample size, the study period may be extended.

b) A smaller sample size may be used if:

(1) that sample size is at least 10 percent of the class or subclass population; or

(2) both the Division and the county agree that the sample may produce statistics that infer corrective action appropriate to the class or subclass of property.

c) If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding , and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by September first of each study cycle.

5. Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

C. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action:

1. The Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders without Tax Commission approval. The Division may agree to any stipulation subsequent to an appeal subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the May 22 deadline.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the assessment roll closes on May 22 as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit by July 1 of each assessment cycle. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit. Any required adjustment shall appear on the notice required under Section 59-2-919 (4) and Tax Commission rule R884-24P-24 for the current year. This notice shall not be mailed to taxpayers until required adjustments are implemented.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2000 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item

retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;

(2) library materials;

(3) patterns, jigs and dies;

(4) pots, pans, and utensils;

(5) canned computer software;

(6) hotel linen;

(7) wood and pallets; and

(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
99	70%
98	40%
97 and prior	10%

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
99	87%
98	71%
97	60%
96	51%
95	44%
94	36%
93	27%
92 and prior	17%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;

(2) alarm systems;

(3) shopping carts;

(4) ATM machines;

(5) small equipment rentals;

(6) rent-to-own merchandise;

(7) telephone equipment and systems;

(8) music systems;

(9) vending machines; and

(10) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
99	83%
98	67%
97	51%
96	34%
95 and prior	18%

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;

(2) bars and sinks:

(3) booths, tables and chairs;

(4) beauty and barber shop fixtures;

(5) cabinets and shelves;

(6) displays, cases and racks;

(7) office furniture;

(8) theater seats;

(9) water slides; and

(10) signs, mechanical and electrical.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
99	90%
98	80%
97	71%
96	62%
95	53%
94	44%
93	34%
92	23%
91 and prior	11%

5. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and

(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trucks weighing two tons or more have a minimum value of $1,750 and a minimum tax of $26.25.

TABLE 6

Year of Model	Percent Good of Cost New
00	90%
99	64%
98	59%
97	55%
96	50%
95	46%
94	42%
93	37%
92	33%
91	29%
90	24%
89	20%
88	15%
87 and prior	11%

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;

(2) exam tables and chairs;

(3) high-tech hospital equipment;

(4) microscopes; and

(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
99	92%
98	83%
97	76%
96	69%
95	62%
94	55%
93	47%
92	38%
91	29%
90	19%
89 and prior	10%

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;

(4) distillery equipment;

(5) refrigeration equipment;

(6) laundry and dry cleaning equipment;

(7) machine shop equipment;

(8) processing equipment;

(9) auto service and repair equipment;

(10) mining equipment;

(11) ski lift machinery;

(12) printing equipment; and

(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
99	92%
98	83%
97	76%
96	69%
95	62%
94	55%
93	47%
92	38%
91	29%
90	19%
89 and prior	10%

8. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:

(1) dirt and trail motorcycles;

(2) all terrain vehicles;

(3) golf carts; and

(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Off-Highway Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
00	90%
99	61%
98	58%
97	55%
96	51%
95	48%
94	45%
93	42%
92	39%
91	35%
90	32%
89	29%
88	26%
87 and prior	23%

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
99	93%
98	87%
97	81%
96	75%
95	70%
94	66%
93	60%
92	53%
91	46%
90	39%
89	32%
88	25%
87	18%

86 and prior	10%

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters; and

(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Street motorcycles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 11

Year of Model	Percent Good of Cost New
00	90%
99	70%
98	68%
97	65%
96	63%
95	61%
94	58%
93	56%
92	54%
91	51%
90	49%
89	46%
88	44%
87	42%
86	39%
85	37%
84	34%
83 and prior	32%

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

(1) data processing equipment;

(2) personal computers;

(3) main frame computers;

(4) computer equipment peripherals; and

(5) cad/cam systems.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Model	Percent Good of Acquisition Cost
99	86%
98	57%
97	36%
96	23%
95	14%
94 and prior	9%

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) power sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 2000 model equipment purchased in 1999 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
99	62%
98	59%
97	56%
96	52%
95	49%
94	46%
93	43%
92	39%
91	36%
90	33%
89	30%
88	26%
87	23%
86 and prior	20%

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 2000 percent good applies to 2000 models purchased in 1999.

TABLE 14

Year of Model	Percent Good of Cost New
00	90%
99	73%
98	70%
97	66%
96	62%
95	59%
94	55%
93	51%
92	48%
91	44%
90	41%
89	37%
88	33%
87	30%
86	26%
85	23%
84 and prior	19%

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
99	74%
98	54%
97	38%
96	24%
95 and prior	10%

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
99	95%
98	90%
97	86%
96	82%
95	79%
94	77%
93	73%
92	68%
91	63%
90	58%
89	54%
88	50%
87	46%
86	40%
85	34%
84	27%
83	21%
82	14%
81 and prior	7%

16. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats;

(2) boat motors; and

(3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Boats have a minimum value of $500 and a minimum tax of $7.50.

TABLE 17

Year of Model	Percent Good of Cost New
00	90%
99	69%
98	67%
97	65%
96	62%
95	60%
94	58%
93	55%
92	53%
91	51%
90	48%
89	46%
88	44%
87	41%
86	39%
85	37%
84	34%
83	32%
82	30%
81	27%
80 and prior	25%

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trailers and truck campers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 18

Year of Model	Percent Good of Cost New
00	90%
99	70%
98	67%
97	64%
96	60%
95	57%
94	53%
93	50%
92	46%
91	43%
90	40%
89	36%
88	33%
87	29%
86	26%
85	22%
84 and prior	19%

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
99	93%
98	86%
97	80%
96	74%
95	69%
94	63%
93	56%
92	48%
91	40%
90	33%
89	26%
88	18%
87 and prior	10%

19. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Commercial and utility trailers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 21

Year of Model	Percent Good of Cost New
00	95%
99	70%
98	67%
97	63%
96	59%
95	55%
94	51%
93	47%
92	44%
91	40%
90	36%
89	32%
88	28%
87	25%
86	21%
85	17%
84 and prior	13%

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
99	75%
98	71%
97	67%
96	63%
95	59%
94	55%
93	51%
92	47%
91	43%
90	39%
89	35%
88 and prior	31%

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
99	94%
98	88%
97	82%
96	77%
95	71%
94	65%
93	59%
92	54%
91	48%
90	42%
89	36%
88 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Private Rail Car Company Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the total rail car market value divided by the total number of rail cars in the rail car company's fleet.

2. "Total rail car market value" means the sum of the acquisition cost by year for rail cars purchased by the rail car company multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Valuation Guides and Schedules, plus the sum of betterments by year depreciated on a 14-year straight line method.

3. "Total system car miles" means both loaded and empty miles accumulated during the prior calendar year by all the rail cars in the rail company's fleet.

4. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all the rail cars in the rail company's fleet.

5. "Utah percent of the system factor" means the Utah car miles divided by the total system car miles.

B. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the total rail car market value.

C. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner:

1. Calculate the number of rail cars allocated to Utah under the percent of system factor.

a) Multiply the Utah percent of system factor by the total number of in-service rail cars in the company's fleet.

b) Multiply the product obtained in C.1.a) by 50 percent.

2. Calculate the number of rail cars allocated to Utah under the time speed factor.

a) Divide Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in C.2.a) by the percent of in-service rail cars in the company's fleet.

c) Multiply the product obtained in C.2.b) by 50 percent.

3. Add the number of rail cars allocated to Utah under the percent of system factor, calculated in C.1.b), and the number of rail cars allocated to Utah under the time speed factor, calculated in C.2.c), and multiply that sum by the average market value per rail car.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1997.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2. and F.4., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

R884-24P-53. 2000 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2- 501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	725
2)	Cache	625
3)	Carbon	525
4)	Davis	750
5)	Emery	425
6)	Iron	700
7)	Kane	425
8)	Millard	700
9)	Salt Lake	600
10)	Utah	700
11)	Washington	650
12)	Weber	750

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	625
2)	Cache	525
3)	Carbon	425
4)	Davis	650
5)	Duchesne	525
6)	Emery	325
7)	Grand	375
8)	Iron	600
9)	Juab	450
10)	Kane	325
11)	Millard	600
12)	Salt Lake	500
13)	Sanpete	500
14)	Sevier	550
15)	Summit	475
16)	Tooele	450
17)	Utah	600
18)	Wasatch	500
19)	Washington	550
20)	Weber	650

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	450
2)	Box Elder	475
3)	Cache	375
4)	Carbon	275
5)	Davis	500
6)	Duchesne	375
7)	Emery	175
8)	Garfield	150
9)	Grand	225
10)	Iron	450
11)	Juab	300
12)	Kane	175
13)	Millard	450
14)	Morgan	400
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	150
19)	Sanpete	350
20)	Sevier	400
21)	Summit	325
22)	Tooele	300
23)	Uintah	375
24)	Utah	450
25)	Wasatch	350
26)	Washington	400
27)	Wayne	275
28)	Weber	500

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	350
2)	Box Elder	375
3)	Cache	275
4)	Carbon	175
5)	Daggett	275
6)	Davis	400
7)	Duchesne	275
8)	Emery	75
9)	Garfield	50
10)	Grand	125
11)	Iron	350
12)	Juab	200
13)	Kane	75
14)	Millard	350
15)	Morgan	300
16)	Piute	250
17)	Rich	200
18)	Salt Lake	250
19)	San Juan	50
20)	Sanpete	250
21)	Sevier	300
22)	Summit	225
23)	Tooele	200
24)	Uintah	275
25)	Utah	350
26)	Wasatch	250
27)	Washington	300
28)	Wayne	175
29)	Weber	400

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

a)	Box Elder	600
b)	Davis	620
c)	Utah	575
d)	Washington	760
e)	Weber	610
f)	All other counties	580

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	170
2)	Box Elder	175
3)	Cache	200
4)	Carbon	125
5)	Daggett	175
6)	Davis	220
7)	Duchesne	150
8)	Emery	100
9)	Garfield	100
10)	Grand	110
11)	Iron	180
12)	Juab	125
13)	Kane	100
14)	Millard	150
15)	Morgan	150
16)	Piute	145
17)	Rich	125
18)	Salt Lake	175
19)	Sanpete	175
20)	Sevier	200
21)	Summit	175
22)	Tooele	175
23)	Uintah	160
24)	Utah	190
25)	Wasatch	175
26)	Washington	190
27)	Wayne	115
28)	Weber	230

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	65
2)	Box Elder	90
3)	Cache	110
4)	Carbon	70
5)	Davis	80
6)	Duchesne	75
7)	Garfield	50
8)	Grand	50
9)	Iron	60
10)	Juab	90
11)	Kane	50
12)	Millard	105
13)	Morgan	115

14)	Rich	110
15)	Salt Lake	60
16)	San Juan	50
17)	Sanpete	70
18)	Summit	70
19)	Tooele	75
20)	Uintah	80
21)	Utah	60
22)	Wasatch	70
23)	Washington	55
24)	Weber	90

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	30
2)	Box Elder	55
3)	Cache	75
4)	Carbon	35
5)	Davis	45
6)	Duchesne	40
7)	Garfield	15
8)	Grand	15
9)	Iron	25
10)	Juab	55
11)	Kane	15
12)	Millard	70
13)	Morgan	80
14)	Rich	75
15)	Salt Lake	25
16)	San Juan	15
17)	Sanpete	35
18)	Summit	35
19)	Tooele	40
20)	Uintah	45
21)	Utah	25
22)	Wasatch	35
23)	Washington	20
24)	Weber	55

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

a)	Graze I	
	1) All Counties	42
b)	Graze II	
	2) All Counties	14
c)	Graze III	
	3) All Counties	9
d)	Graze IV	
	4) All Counties	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

a)	Nonproductive Land	
	1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301, and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Customer Service Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(3)

"Principal route:" means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

3. "Unpaid judgment" means the taxpayer awarded the judgment has not received payment of the judgment amount.

B. For purposes of Section 59-2-924(2)(a)(v), a judgment must be unpaid when the taxing entity holds its final meeting for setting property tax rates.

C. To determine whether a judgment is less than the smaller of $1,000 or one percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year, a taxing entity:

1. shall measure its pro rata share of the judgment, including interest, against the measure set forth in C.; and

2. may not aggregate judgments prior to applying the test set forth in C.

D. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by D.1. and D.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

E. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

F. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

G. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

H. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-401.5, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board

of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions:

1. "Attributes" of property include all defining characteristics inseparable from real property and tangible personal property, such as size, location and other attributes inherent in the property itself.

2. "Cost regulated utility" means any public utility assessable by the Commission pursuant to Section 59-2-201, whose allowed rates are determined by a state or federal regulatory commission by reference to a rate of return applied to rate base where the rate of return and rate base are set by the regulatory body.

3. "Depreciation" is the loss in value from any cause. There are two distinct types of depreciation encountered in the appraisal of properties subject to this rule: accounting depreciation and appraisal depreciation. Accounting depreciation is often called "book depreciation" and is generally calculated in accordance with generally accepted accounting principles or regulatory guidelines. Appraisal depreciation is the total loss in property value from any cause. There are three recognized types of appraisal depreciation: physical deterioration, functional obsolescence and external obsolescence. Physical deterioration is the physical wearing out of the property evidenced by wear and tear, decay and structural defects. Physical deterioration includes the loss in value due to normal aging. Functional obsolescence is the loss in value due to functional deficiencies or inadequacies within the property depicted as the inability of the property to perform adequately the functions for which it was originally designed. External (economic) obsolescence is the loss in value from causes outside the boundaries of the property and is generally incurable. Appraisal depreciation is often called "accrued depreciation."

4. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best

use, subject to regulatory constraints.

5. "Property" means property that is subject to assessment and taxation according to its value but does not include intangible property. Intangible property is property that is capable of private ownership separate from tangible property and includes moneys, credits, bonds, stocks, representative property, franchises, licenses, trade names, copyrights, and patents.

6. "Property which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation and construction and functions as an economic unit or "one thing."

7. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

8. "State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities.

a. "Telecommunication properties" means all telephone properties and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

b. "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations and other similar type entities and are assessable by the Commission pursuant to Section 59-2-201.

c. "Transportation properties" means all airline, air charter service, air contract service, railroad, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

B. General Valuation Principles. State assessed utility and transportation properties shall be assessed at fair market value for property tax purposes based on generally accepted appraisal theory and the provisions of this rule.

1. Taxable Property and Unit Methodologies. All property, as defined in this rule, is subject to assessment, and if the property operates together as a unit, the assemblage or enhanced value attributable to the taxable property operating together should be included in the assessed value.

a. The preferred methods to determine the fair market value for all state assessed utility and transportation property are a cost indicator and a yield capitalization income indicator.

b. Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary in order to more accurately estimate the fair market value, which includes assemblage or enhanced value, of properties that operate together as a unit.

c. The direct capitalization income method and the stock and debt market method may tend to capture the value of intangible property, as defined in this rule, at higher levels than other methods. Accordingly, the value attributable to such intangible property must be identified and removed from value. To the extent such intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the correlation process, as set forth in Section B.5.

d. No final estimate of value will be imposed or considered unless the weighting percentages of the various value indicators used to correlate the final estimate of value are disclosed in writing. Disclosure of the weighting percentages also includes a written explanation describing why a party weighted the particular indicators of value by the percentages so indicated.

e. A party may challenge a final estimate of value by proposing a different valuation methodology or weighting formula that establishes a more accurate final estimate of value. A challenge to a final estimate of value will be considered effective only if the proposed valuation methodology or weighting formula demonstrates, by a preponderance of the evidence, that it establishes a more accurate estimate of fair market value.

2. Cost Indicator. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. Generally a cost indicator may be developed under one or more of the following approaches; replacement cost new less depreciation ("RCNLD"), reproduction cost less depreciation ("Reproduction Cost"), and historic cost less depreciation ("HCLD").

a. RCNLD. Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout.

b. Reproduction Cost. Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Reproduction cost shall be adjusted for appropriate depreciation.

c. HCLD. The HCLD approach is the historic cost less depreciation, which may, depending upon the industry, be trended to current costs. Only trending indexes commonly recognized by the industry may be used as a trending adjustment to HCLD.

d. In the mass appraisal environment for state assessed utility and transportation property, RCNLD is impractical to implement. The preferred cost indicator of value is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value. A challenge to the use of HCLD as the cost indicator of value will be considered effective only if the proposed cost indicator of value demonstrates, by a preponderance of the evidence, that it establishes a more accurate cost estimate of value.

3. Income Indicator. An income indicator recognizes that value is created by the expectation of future benefits to be derived from the property.

a. Yield Capitalization Approach. This income indicator

shall be determined by converting future cash flows to present value as of the lien date by capitalizing future estimated cash flows at an appropriate discount rate. The yield capitalization formula is CF/(k-g), where "CF" is cash flow, "k" is the nominal, risk adjusted discount rate, and "g" is the expected future growth of the cash flow in the numerator. Each of these terms is defined below. A discounted cash flow method in which (i) individual years' cash flow are projected, (ii) the formula CF/(k-g) is used to compute terminal value, and (iii) the projected cash flows and terminal value are discounted back to present value; may be used as a substitute income valuation approach for the above yield capitalization approach when the use of a single representative annual cash flow is clearly inappropriate.

(1) Cash Flow ("CF"). Cash flow is restricted to cash flows provided by the operating assets in existence on the lien date, together with any replacements intended to maintain, and not expand or modify, the existing capacity or function thereof. Cash flow is calculated as net operating income (NOI) plus noncash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to net working capital necessary to achieve the expected growth "g". The cash flows should reflect the cash flows available to pay sources of financing for the assets in existence on the lien date or an equivalent pool of assets. The capital expenditures should include only those expenditures necessary to replace or maintain existing plant and should not include any expenditures intended for expansion or productivity and capacity enhancements. If a taxpayer is unable to separate replacement capital expenditures from expansion capital expenditures, the taxpayer must provide the Property Tax Division sufficient data to adjust the "g" in the yield capitalization formula appropriately. If the taxpayer is unable to provide data to adjust the "g", the Property Tax Division will estimate an adjustment to cash flows or "g" based on the best information available. Information necessary for the Property Tax Division to calculate the appropriate cash flow shall be summarized and submitted to the Property Tax Division by March 1 on a form provided by the Property Tax Division. The calculation of Cash Flow may be illustrated by the following formula:

CF = NOI + Noncash Charges - Replacement Capital Expenditures - Additions to Net Working Capital

(a) Cash flow is the projected cash flow for the next year and may be estimated by reviewing the last five years' cash flows, forecasting future cash flows, or a combination of both.

(b) If cash flows for a subsidiary company are not available or are not allocated between subsidiary companies on the parent company's cash flow statements, then a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. Whichever criterion is chosen, the subsidiary's total is divided by the parent's total to produce a percentage that is applied to the parent's total cash flow to estimate the subsidiary's cash flow.

(c) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, Property Tax Division may estimate cash flow using the best information available.

(2) Discount Rate ("k"). The discount rate shall be based upon a weighted average cost of capital considering current market debt rates and equity yields determined by recognized market measurements such as capital asset pricing model ("CAPM"), Risk Premium, Dividend Growth models, or other recognized models. The weighting of debt and equity should reflect the market value weightings of comparable companies in the industry.

(a) Cost of Debt. The cost of debt should reflect the current market (yield to maturity) of debt with the same credit rating as the subject company.

(b) Cost of Equity. In the discount rate, the CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 75% in the correlation.

(c) CAPM. The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(i) Risk Free Rate ("R(f)"). The risk free rate shall be the current market rate on 20 year Treasury bonds.

(ii) Beta. The beta should reflect an average or value-weighted average of comparable companies. The beta of the comparable companies should be drawn from Value Line or a comparable source. Once a source is chosen, beta should be drawn consistently from this source. However, the beta of the specific assessed property should also be considered.

(iii) Risk Premium. The risk premium shall be obtained from the current Ibbotson Associates study. The risk premium shall be the arithmetic average of the spread between the return on stocks and long term bonds for the most recent 40 years.

(3) Growth Rate ("g"). The growth rate "g" is the expected future growth of the cash flow in the numerator of the formula given in CF/(k-g). If insufficient information is available to the Property Tax Division, either from public sources or from the taxpayer, to determine an appropriate "g", then "g" will be the expected inflationary rate as given by the Gross Domestic Product Price Deflator obtained in Value Line. The inflationary rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b. Direct Capitalization Approach. This is an income approach that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by an appropriate income capitalization rate or by multiplying the normalized income estimate by an appropriate factor.

4. Market Indicator. The market value of property is directly related to the prices of comparable, competitive properties; or the sale of the specific assessed property when such information is available. The market or sales comparison approach is estimated by comparing the subject property to similar properties that have recently sold. Because sales of state assessed utility and transportation properties are infrequent, the stock and debt approach may be used as a surrogate to the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liability plus shareholder's equity.

5. Correlation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, and quality or reliability of data and the strength and weaknesses of each value indicator. The

percentage weight assigned to each indicator in the correlation process shall be established, disclosed and explained as set forth in Section B.1.

6. Non-operating property. Property that is not necessary to the operation of the state assessed utility or transportation properties and is assessed by the local county assessor, and property separately assessed by the Property Tax Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

7. Leased property. All tangible operating property owned, leased, or used by state assessed utilities and transportation companies is subject to assessment.

8. Property Specific Considerations. The Commission recognizes that because of unique differences between certain types of properties and industries, modifications or alternatives to these general cost and yield income indicators, as set forth in Sections C., D., and E., may be required for the following industries: (a) cost regulated utilities, (b) telecommunications properties, and (c) transportation properties.

C. Cost regulated utilities:

1. Cost Indicator. The HCLD approach is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. The HCLD approach is calculated by taking the historic cost less deprecation as reflected in the state assessed utility's net plant accounts, and by then (1) subtracting intangible property, (2) subtracting any items not included in the state assessed utility's rate base (e.g., deferred federal income taxes ("DFIT") and, if appropriate, acquisition adjustments), and (3) adding any taxable items not included in the state assessed utility's net plant account or in rate base.

a. Deferred Federal Income Taxes. DFIT is an accounting entry that reflects a timing difference for reporting income and expenses. Accumulated DFIT reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude DFIT from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by DFIT for rate base regulated companies, DFIT may be removed from HCLD as a surrogate measure for economic obsolescence.

b. DFIT can be a surrogate measure for economic obsolescence. If a study is prepared that authenticates actual economic obsolescence and is approved by the Commission, the amount of the actual economic obsolescence will be subtracted from HCLD to develop the cost indicator of value.

2. Income indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

D. Telecommunications Companies:

1. Cost Indicator. This includes the operating property of local exchange carriers, local access providers. long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers. The HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

2. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

E. Transportation Properties. These include the operating property of long haul and short line railroads, commercial airlines, including major and small passenger carriers and major and small air freighters.

1. Railroads.

a. Cost Indicator. The Railroad industry is not rate base regulated and does not typically have a majority of its investment in property of recent vintage. Accordingly, for Railroads, the cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value. Cost valuation should be based on trended historical costs less depreciation. Additions should be made for material and supplies and operating leased equipment. Deductions should be made for all capitalized intangible property such as customized computer software. All forms of depreciation should be measured and appropriately deducted.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

2. Commercial airlines, including major and small passenger carriers and major and small air freighters.

a. Cost Indicator. The trended HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

F. This rule shall have an effective date of January 1, 1999.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

A. For purposes of Sections 59-2-1104 and 59-2-1106,

taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

KEY: taxation, personal property, property tax, appraisal
December 14, 1999 **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **9-2-201**
11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13
59-2-102
59-2-103
59-2-104
59-2-201
59-2-210
59-2-211
59-2-219
59-2-301
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-406
59-2-501 through 59-2-515
59-2-701
59-2-702
59-2-703
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1005
59-2-1101
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, 1998 edition and amendments which appear, November 1, 1998, December 1, 1998, January 1, 1999, February 1, 1999, March 1, 1999, April 1, 1999, May 1, 1999, June 1, 1999, July 1, 1999, August 1, 1999 and September 1, 1999, as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 391.11(b)(1), 395.1(l), 395.1(m), 395.1(n) and 395.1(o). These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 and UCA 72-9-102(4) engaged in Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

C. Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34,

D. Drivers involved wholly in intrastate commerce shall be at least 18 years old; unless transporting placarded amounts of hazardous materials; or 16 or more passengers including the driver.

E. Drivers in involved in interstate commerce shall be at least 21 years old.

KEY: trucks, transportation safety
December 15, 1999 **72-9-103**
Notice of Continuation March 31, 1997 **72-9-104**
54-6-9
63-49-4

R986. Workforce Services, Employment Development.
R986-218. Financial Assistance General Assistance/Self-Sufficiency Program.
R986-218-800. Incorporation by Reference.

Unless otherwise indicated, all references to 45 CFR refer to the Code of Federal Regulations, 45, Parts 200 through 499, revised as of October 1, 1990. All referenced Federal Regulation are available for public review at the Division of Employment Development, 140 East 300 South, Salt Lake City, Utah 84103.

R986-218-801. Authority.

The department requires compliance with Section 35A-3-401, Utah Code Annotated, 1953.

R986-218-802. Description.

1. The General Assistance Self-Sufficiency Program (GASSP) provides temporary financial support to single persons and couples while they are overcoming the condition making them unemployable or while they are qualifying for Supplemental Security Income (SSI). The GASSP Program provides financial support on a time limited basis, not to exceed 24 months out of any 60 month period, retroactive to March 1, 1998, while participants are involved in medical and/or mental health treatment to overcome the limitations keeping them from employment.

2. This financial supportive service is based on the concept of mutual responsibility. The client has the responsibility to make efforts to overcome the condition making him or her unemployable and to move towards increasing their income or to qualify for other benefits.

3. Less capable clients may receive special help from department staff in applying for these other benefits and participating in employment activities.

4. Department staff have the responsibility to assist clients in increasing their income through employment and/or in securing other benefits.

5. To qualify, individuals must:

a. Be at least 18 years old or emancipated.

b. Be unemployable because of a physical or psychological impairment or they must be unable to work at a job at least 23 hours weekly at minimum wage.

c. Participate in rehabilitation and employment services and follow through on efforts to qualify for other benefits for which they may be eligible. This includes SSI, Social Security Disability Insurance (SSDI), Veterans Benefits, Workers' Compensation.

6. A person eligible for Bureau of Indian Affairs (BIA) assistance is not eligible for GASSP.

R986-218-810. Program Standards.

1. The following definitions apply to this section:

a. "Bona fide offer of employment" means an offer of employment was given and was made in good faith.

b. "Good cause for refusing employment" means a definite job offer was not made; the wages did not meet minimum wage requirements; the employment was a risk to the health or safety of the worker; the employment lacked workmen's compensation benefits; the position offered is vacant due to a strike, lockout or other bona fide labor dispute; or the individual is unable to work for physical reasons or for lack of transportation.

2. Age and Factually Emancipated Child:

a. The individual must be at least eighteen years of age or emancipated.

b. A person who is not legally emancipated may claim to be factually emancipated. The person must live independently from his or her parents or guardian and have been economically self-supporting for the past six months.

c. If the parents are available the local department office shall contact them.

i. The child is ineligible if the parents will support him or her.

ii. If the parents refuse to support the child or are unavailable, child support enforcement procedures must be followed.

iii. If the applicant refuses without good cause to cooperate in locating the parents, he or she is ineligible.

3. All applicants are determined employable unless they meet the unemployable criteria.

4. Unemployable criteria:

The applicant must provide current medical evidence that he or she is not employable due to a physical or mental impairment. The local department office may accept a licensed Medical Doctor (MD) or a Doctor of Osteopathy (DO) statement, a licensed/certified psychologist statement, a Utah Medical Assistance Program statement, or a statement from another agency involved in disability determination, such as, the Veterans Administration or the Division of Rehabilitation Services. The local department office may require a second opinion by a specific person or agency. The cost of a physical examination requested by the department will be paid by the local department office.

a. If the medical report says the client can work with no limitations or that the limitations will last less than 30 days from the date of the onset of the physical or mental impairment, the case will be denied.

b. If the medical report indicates the applicant is unable to work at least 23 hours weekly for 30 days or more from the date of the onset of physical or mental impairment, he or she is considered unemployable.

c. If the illness or incapacity may last longer than a year, then the person must apply for SSDI/SSI benefits.

5. Employment Focused Case Management:

a. All applicants and their spouses, at time of application, and recipients must be interviewed by an employment counselor and complete an employment plan before financial benefits can be authorized. Recipients must actively follow through on the plan.

b. A person is exempt from these requirements if the person has qualified for SSI and is waiting for the first check.

6. SSI and Other Benefits:

a. To be eligible for GA, applicants/recipients must apply for and follow through with any other programs and benefits for which they may be eligible. These include Supplemental Security Income, Social Security, Veterans Benefits, and Worker Compensation.

b. If applicant/recipient seems to meet SSI requirements, the department follows the instructions in paragraphs 7 and 8

below. If an applicant/recipient appears to meet Worker Compensation requirements, the Department follows the instructions in item number 10 below.

7. Interim Aid for SSI Applicants:

The person must complete Form 75, Agreement to Repay Interim Assistance, before he or she applies for SSI.

i. The case is closed when the Office of Recovery Services (ORS) reports the receipt of the first SSI check.

ii. If an individual receives a three month presumptive eligibility SSI payment, the GA case is closed when this begins.

iii. The case is closed if the client fails to follow through on the SSI application.

iv. The date of SSI recoupment is also the date the Department receives the signed Authorization Form 75 from the client.

v. The Department will recover, from either the initial SSI check or from the recipient, the interim assistance paid to an individual for the period of time taken to determine eligibility for SSI. This will be done in both initial claims and post-eligibility situations.

8. SSI Denials and Appeals:

Clients must appeal a SSI denial decision, at least to the Social Security Administrative Law Judge Level (ALJ). Any individual who has received an Unfavorable Decision based on disability by the ALJ is not eligible for cash assistance, unless an unrelated physical or mental health condition develops and is verified.

9. SSI/SSDI Terminations due to Drug and Alcohol Abuse (DAA):

The GASSP Program will mirror the rules and regulations from the Social Security Administration as outlined in Public Law 104-121:

i. Drug addiction and/or alcoholism alone are not considered as conditions for unemployment under the General Assistance Program.

ii. Proof on another disabling impairment(s) substantiated with medical evidence, must be provided and all other factors of eligibility met in order to qualify for financial benefits under the General Assistance Program.

iii. Individual with DAA should be referred to resource agencies which would assist them with treatment.

10. Lien Agreement for Worker Compensation Applicants:

The person must complete Form 75w, Repayment of General Assistance and Lien Agreement, before he or she can be approved for General Assistance.

i. The Department will recover from either the insurance carrier or from the recipient, the lesser of the General Assistance paid to the client or the Temporary Total Disability Compensation less Attorney's fees paid to an individual for each month that the client received both General Assistance and Temporary Total Disability Compensation.

ii. Recipients must appeal a Worker Compensation denial decision if the local department office worker feels there is a reasonable chance for a successful appeal.

11. Rehabilitation and Employment Performance Requirements:

a. To promote rehabilitation and employment, the employment counselor or designated staff may require a GA recipient to meet one or more employment activity requirements. Employment activities include:

i. Participation in Division of Rehabilitation (DRS) services.

ii. Participation in medical or mental health care or an alcoholism or drug treatment program may be required as appropriate.

iii. Satisfactory participation on a WEAT project. The employment counselor may establish with the client the hours of participation for each performance period.

iv. Participation in job search and job search training.

v. Enrollment and participation in self-sufficiency groups, adult education, skill training programs, or appropriate workshops.

vi. Registration for employment with the department. The registration must remain current and continuous.

vii. Other activities leading towards increased income as agreed upon in the employment plan.

b. An individual may not refuse a bona fide offer of employment without good cause.

c. If a recipient is required, but fails, to meet one or more of the above rehabilitation or employment standards without good cause, the GA financial case is closed at the end of the current month. Verified illness, incapacity, lack of transportation, arrest, or extenuating circumstances as approved by the employment counselor may be good cause for not meeting an employment or rehabilitation requirement. The financial case remains closed until the client participates in the required employment activity and demonstrates that he or she continue satisfactory participation.

d. The consequences for non-participation are as follows:

i. First Occurrence - financial case closes with 10 day notice and cannot be reopened until the individual demonstrates a willingness to participate. Reopen case back to the date of participation as negotiated with Employment Counselor.

ii. Second Occurrence - financial case closes with 10 day notice and will remain closed for 30 days and until participation has been demonstrated.

iii. Third Occurrence - case must be staffed with supervisor or designee and if non-participation is verified after staffing, financial case closes with 10 day notice and remains closed for 6 months.

12. The employment counselor may provide help to clients for up to six months after termination. The services may include help in getting needed services, job placement services, counseling, GASSP medical services and GASSP Z fund assistance.

13. Residents of Institutions, group homes, and alcoholism and drug treatment centers are not eligible if the facility receives funding for residential treatment under government contract or if the facility is administered by a government unit or is administered under contract with a government unit.

R986-218-820. Income Standards, Eligibility and Grant Determination.

1. Temporary Assistance for Needy Families (TANF) rules apply unless a different rule is stated below. Financial responsibility is limited to spouse for spouse. The income and assets of people with financial responsibility for a GA client is counted in determining eligibility and grant amount if they are

living with the client.

2. The only people included in the grant are those who:

a. Live together, and

b. Have financial responsibility for one another.

3. The SSI income of financially responsible household members is counted. A person receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, pursuant to 20 CFR Part 416.1321 through 416.1330.

4. The only earned income disregard are

a. The first $100 of earnings and 50% of the remaining earned income

b. Participants who have received a GASSP financial payment in one of the past four months will also have the $100 and 50% disregard subtracted from their earnings for the Net Needs Test calculations.

c. The $100 and 50% earned income disregard is applied to each individuals' earnings and is not time limited.

5. The household is eligible if the available income is less than the standard grant. The minimum grant shall not be less than one dollar.

R986-218-830. Assets.

1. The value of countable real and personal assets cannot exceed $2000. The size of the household does not change the amount of this asset limitation.

2. Do not count the equity value up to $8000 per household of one car or other motor vehicle. If the one car the household applies this exclusion to is equipped to transport a disabled household member, the entire equity value is excluded. Count the equity value of any additional cars. TANF rules in R986-213-304 apply unless otherwise listed.

R986-218-840. GA Medical Benefit.

A person eligible for GA financial assistance is eligible for medical assistance without completing a separate application.

R986-218-850. Reviews.

If the recipient is actively involved in following through on self-sufficiency activities, a review every 12 months may be required. Otherwise, a review of the case takes place at least every six months. Each individual must have developed a self-sufficiency plan and be following through on that plan unless exempted. If exempted, a review is completed to see if the reason for the exemption still applies. Also, a review for SSI eligibility is completed.

R986-218-860. Special General Assistance Program For Transient Persons.

1. Transient persons are non-residents of Utah who are temporarily stranded and do not intend to stay in Utah.

2. The regional department director or designee may approve assistance to cover the emergency need under the GA category.

KEY: public assistance programs, resources*
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R994. Workforce Services, Workforce Information and Payment Services.
R994-305. Collection of Contributions.
R994-305-101. General Definition.

Under Subsections 35A-4-305(1)(d) and 35A-4-305(1)(f) the Department will implement a write off policy as set forth in the following paragraphs.

R994-305-102. Policy Governing the Filing of Warrants.

Warrants shall be issued on accounts receivable overpayments and delinquent employer accounts of $100 or more unless the debtor is in compliance with an installment agreement. Warrants will be issued on all fraudulent overpayments established under Subsection 35A-4-405(5), even if there is an installment agreement, within three years of the establishment of the overpayment. No warrants will be issued on non-fault overpayments established under Subsection 35A-4-406(5).

R994-305-103. When No Warrant Has Been Filed.

All non-fault overpayments established under Subsection 35A-4-406(5) and all accounts receivable overpayments established under Subsection 35A-4-406(5) for claimants and all liabilities assessed against employers where a warrant has not been filed will be written off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.

R994-305-104. When a Warrant Has Been Filed.

(1) Three Year Review.

Except for fraud overpayments established under Subsection 35A-4-406(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties, which have not been collected or offset within three years after the filing of a warrant will be reviewed for determination of collectibility. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department will write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgement on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.

(2) Eight Year Write Off.

All accounts receivable overpayments for claimants including Subsection 35A-4-405(5) overpayments and employer liabilities including interest and penalties which have not been collected within eight years after the issuance of a warrant will be written off, unless payments are being received consistent with an installment agreement or court order. All collection or offset action shall cease. The debt will be forgiven and forgotten as though no such debt ever existed and it will be removed from the Department records. When an overpayment for fraud established under Subsection 35A-4-405(5) is removed from Department records, the claimant may receive waiting week credit and future benefits may be paid without reference to the prior Subsection 35A-4-405(5) overpayment.

R994-305-801. Wage List Requirement.

(1) General Definition.

The Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments. This rule explains what information is required, due dates, acceptable formats, and penalties for non-compliance.

(2) Wage List Due Date.

The wage list for a quarter must be filed by the last day of the month following the end of that calendar quarter. The due dates are January 31, April 30, July 31, and October 31.

(3) Wage Information Required.

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided on each wage list in this order: employee's social security number, employee's name (first initial, second initial and full last name), gross wages paid during the quarter (see Section 35A-4-208 for a definition of wages), and the date of hire if hired or rehired during the quarter being reported. The gross wages reported are wages which are considered to be subject employment (see Section 35A-4-204 for a definition of subject employment). Only those employees who were paid wages during the quarter should be listed on the wage list.

(4) Wage Reporting Methods.

The Department will accept wage lists filed on approved forms or approved magnetic tape, cartridge or diskette. All wage lists reported on forms other than those provided by the Department require prior approval.

(a) Approved Form Reporting.

The wage list must be typewritten or machine printed in black ink so that it is capable of being "read" by an optical scanner. The wage list must be on Forms 3C or 3H, Utah Employer's Quarterly Wage List, or on plain white paper using the exact same format, placement on the page, and spacing as on the forms listed above. Photocopies of the Department's wage list forms are not acceptable. Wage list forms are available upon request from the Department.

(b) Magnetic Media Reporting.

Employers may report wages paid during the quarter on magnetic tape, cartridge or diskette. Magnetic media reporting must be submitted according to specifications approved by the Department.

(5) Wage List Total Must Equal the Quarterly Report Total.

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, "Employer's Contribution Report." The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, "Reimbursable Employment, Payrolls and New Hires in Utah." Wage lists consisting of more than one page must show a total for each page and a grand total for all pages on the first page.

(6) Wage Lists Corrections for Prior Quarters.

Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the name, social security number, the quarter, the amount of wages that should have been properly reported, and an explanation for the corrections being made. Corrections to wages may result in additional contributions being assessed or refunded.

(7) Penalty for Failure to Provide Wage List Information.

A $50 penalty may be assessed for each failure to submit a wage list as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The $50 penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the $50 penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause may be established if the employer was prevented from filing a wage list for circumstances which are compelling or beyond his control. Payment of the $50 penalty does not relieve the employer from the responsibility of filing the wage list in the approved format.

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