R70. Agriculture and Food, Regulatory Services.
R70-630. Water Vending Machine.
R70-630-1. Authority.

Promulgated under authority of Title 4, Chapter 5.

R70-630-2. Purpose.

The purpose of these rules is to set forth requirements and controls for vending machines designed to dispense water intended for human consumption to assure:

(1) Consumers using such machines are given appropriate information as to the nature of the vended water;

(2) The quality of the water vended meets acceptable standards for potability; and

(3) The vending equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

R70-630-3. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(1) "Approved" means a water vending machine, drinking water source, backflow prevention device or other devices or services that meets the minimum standards of this rule. Approved does not imply satisfactory performance for a specific period of time. Approval, when required, shall be in writing based upon departmental review of data submitted by the water vending industry, manufacturers, operators, owners or managers.

(2) "Approved material" means materials approved by the department as being free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor, radiological, microbial or chemical quality of the water.

(3) "Department" means the Department of Agriculture and Food, Division of Regulatory Services, or its representative.

(4) "Nontoxic" means free of substances which may render the water injurious to health or may adversely affect the flavor, color, odor, chemical or microbial quality of the water.

(5) "Person" means any individual, partnership, firm, company, corporation, trustee, association, public body or private entity engaged in the water vending business.

(6) "Potable water" means water satisfactory for drinking, culinary and domestic purposes meeting the quality standards of rule R309-103, under the Department of Environmental Quality, the Division of Drinking Water.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method of equal effectiveness that meets the requirements for purified water as described in the 21st Edition of the United States Pharmacopoeia issued by Mack Publishing, Easton, Penn. 18042.

(8) "Sanitize" means the effective bactericidal treatment of clean surfaces of equipment, utensils, and containers by a process that provides enough accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

(9) "Sanitizing solution" means Aqueous solutions described by 21 CFR 178.1010, 1999, for the purpose of sanitizing food or water contact surfaces.

(10) "Vended water" means water that is dispensed by a water vending machine or retail water facility for drinking, culinary or other purposes involving a likelihood of the water being ingested by humans. Vended water does not include water from a public water system which has not undergone additional treatment and shall be labeled accordingly.

(11) "Vending machine" means any self-service device which upon insertion of a coin, coins, paper currency, token, card or receipt of payment by other means dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation.

(12) "Water vending machine" means a vending machine connected to water designed to dispense drinking water, purified and/or other water products. Such machines shall be designed to reduce or remove turbidity, off-taste and odors and to provide disinfectant treatment and may include processes for dissolved solid reduction or removal.

(13) "Water vending machine operator" means any person who owns, leases, manages, or is otherwise responsible for the operation of a water vending machine.

R70-630-4. Location and Operation.

(1) Each water vending machine shall be located indoors or otherwise protected against tampering and vandalism, and shall be located in an area that can be maintained in a clean condition, and in a manner that avoids insect and rodent harborage.

(2) The floor on which a water vending machine is located shall be smooth and of cleanable construction.

(3) Each machine shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance. Where process waste water is collected within the machine for pumping or gravity flow to an outside drain, the water line from the processing unit shall terminate at least two inches above the top rim of the retention vessel. Additionally, the waste line from the machine shall be air-gapped. Containers or drip pans used for the storage or collection of liquid wastes within a vending machine shall be leakproof, readily removable, easily cleanable and corrosion resistant. In water vending machines which utilize the bottom of the cabinet interior as an internal sump, the sump shall be readily accessible and corrosion resistant. The waste disposal holding tank shall be maintained in a clean and sanitary manner.

(4) Each machine shall have a backflow prevention device for all connections with the water supply source which meets requirements of The International Plumbing Code and its amendment as adopted by the State of Utah Building Codes Commission and shall have no cross connections between the drain and potable water.

(5) Each person who establishes, maintains, or operates any water vending machine in the state shall first secure a Water Vending Machine Operating Permit issued under Section 4-5-9. Such a permit shall be renewed annually.

(6) Application for permit shall be made in writing and include the location of each water vending machine, the source of the water to be vended, the treatment that the water will receive prior to being vended, and the name of the manufacturer and the model number of each machine.

(7) The source of the water supply shall be an approved

public water system as defined under the Department of Environmental Quality, Division of Drinking Water. Upon application for an initial operating permit, the operator shall submit information which indicates the product being dispensed into the container meets all finished product quality standards applicable to drinking water. When indicated by reason of complaint or illness, the department may require that additional analyses be performed on the source or products of water vending machines.

(8) Each water vending machine shall be maintained in a clean and sanitary condition, free from dust, dirt and vermin.

(9) Labels or advertisements located on or near water vending machines shall not imply nor describe the vended water as "spring water."

(10) Water vending machine labels or advertisements shall not describe or use other words to imply, on the machine or elsewhere, the water as being "purified water" unless such water conforms to the definition contained in this rule.

(11) Water vending machine labels or advertisements shall not describe, on the machine or elsewhere, the water as having medicinal or health giving properties.

(12) Each water vending machine shall have in a position clearly visible to customers the following information:

(a) Name and address of the operator.

(b) Name of the water supply purveyor.

(c) The method of treatment that is utilized.

(d) The method of post-disinfection that is utilized.

(e) A local or toll free number that may be called for further information, problems, or complaints; or the name of the store or building manager can be listed when the machine is located within a business establishment and the establishment manager is responsible for the operation of the machine.

R70-630-5. Construction Requirements.

(1) Water vending machines shall comply with the construction and performance standards of the National Sanitation Foundation or National Automatic Merchandising Association. A list of acceptable third party certification groups is available from 8:00 to 5:00 p.m. at the Utah Department of Agriculture and Food. Water vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces and component parts.

(2) Water contact surfaces and parts of the water vending machine shall be of non-toxic, corrosion-resistant, non-absorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(3) Water vending machines shall have a guarded or recessed spout.

(4) Owners, managers and operators of water vending machines shall ensure that the methods used for treatment of vended water are acceptable to the department. Such acceptable treatment includes distillation, ion-exchange, filtration, ultra-violet light, mineral addition and reverse osmosis.

(5) Water vending machines shall be equipped to disinfect the vended water by ultra-violet light, ozone, or equally effective methods prior to delivery into the customer's container.

(6) Water vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the treatment or disinfectant unit fails to properly function.

(7) Water vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment if the machine is not located in an enclosed building.

(8) Granular activated carbon, if used in the treatment process of vended water, shall comply with the specifications provided by the American Water Works Association for that substance (Standard B604-90).

R70-630-6. Operator Requirements.

(1) Water vending machine operators shall have on file and perform a maintenance program that includes:

(a) Visits for cleaning, sanitizing and servicing of machines at least every two weeks.

(b) Written servicing instructions.

(c) Technical manuals for the machines.

(d) Technical manuals for the water treatment appurtenances involved.

(2) Parts and surfaces of water vending machines shall be kept clean and maintained by the water vending machine operator. The vending chamber and the vending nozzle shall be cleaned and sanitized each time the machine is serviced. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine. These records shall be made available to the department's employees upon request.

(3) Water vending machine operators shall ensure that machines are maintained and monitored to dispense water meeting quality standards specified in this rule. Water analysis shall be performed using approved testing procedures set forth in 21 CFR 165, 1999. Each machine's finished product shall be sampled at least once every three months by the operator, to determine total coliform content. However, provided a satisfactory method of post-treatment disinfection is utilized and based on a sustained record of satisfactory total coliform analyses, the department shall allow modification of the three-month sampling requirement as follows:

(a) When three consecutive three-month samples are each found to contain zero coliform colonies per 100 milliliters of the vended water, microbiological sampling intervals shall be extended to a period not exceeding six months. Should a subsequent six-month sample test positive for total coliform, the required sampling frequency shall revert to the three-month frequency until three consecutive samples again test negative for total coliform bacteria.

(b) If any sample collected from a machine is determined to be unsatisfactory, exceeding the zero coliform colonies per 100 milliliter, the machine shall be cleaned, sanitized and resampled immediately. If, after being cleaned and sanitized, the vended product is determined to be positive for coliform, the machine shall be taken out of service until the source of contamination has been located and corrected.

(4) Each water vending machine operator shall take whatever investigative or corrective actions are necessary to assure a potable water is supplied to consumers.

(5) The vended water from each vending machine utilizing silver-impregnated carbon filters in the treatment process shall be sampled once every six months for silver.

(6) All records pertaining to the sampling and analyses shall be retained by the operator for a period of not less than two years. Results of the analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilites of the Department.

(1) The department may collect and analyze samples of vended water when necessary to determine if the vended water meets the standards of potable water.

(2) After considering the source of water and the treatment process provided by the water vending machine, the department shall determine whether the finished product water will or will not meet quality standards as provided under rule R309-103 under the Division of Drinking Water. If it is determined that the water will not meet potable water standards, the permit to operate a water vending machine shall be denied.

(3) The department will evaluate water vending machines, as well as their locations and support facilities as often as may be deemed necessary for enforcement of the provisions of this rule.

(4) Water vending machine operators shall allow the department to examine necessary records pertaining to the operation and maintenance of the vending machines and also provide access to the machines for inspection at reasonable hours.

R70-630-8. Enforcement and Penalties.

(1) The department shall order a water vending machine operator to discontinue the operation of any water vending machine that represents a threat to the life or health of any person, or whose finished water does not meet the minimum standards provided for in this rule. Such water vending machine shall not be returned to use or used until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall revoke a permit (procedures for permit revocation are stated in R51-2) when it is determined that there has been a substantial failure to comply with the provisions of this rule by which the health or life of an individual, or the health or lives of individuals is threatened or impaired, or by which or through which, directly or indirectly, disease is caused. Permit can also be revoked if the water has been adulterated.

R70-630-9. Preemption of Authority to Regulate.

The regulation of water vending machines is hereby preempted by the state. No county or municipality may adopt or enforce any ordinance which regulates the licensure or operation of water vending machines, unless the director of the county public health unit determines that unique conditions exist within the county which make it necessary for the county to regulate water vending machines in order to protect the public health or welfare, pursuant to Section 4-5-17 and R70-530, Food Protection rule.

KEY: food inspection
March 3, 2000 **4-5**
Notice of Continuation January 11, 2000

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

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

R81-1-2. Definitions.

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

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

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor.

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

(4) "COUNTER" means a level surface on which patrons consume food.

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

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

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

(8) "DIRECTOR" of a private club means an individual elected by stockholders or members of a private club at an annual meeting to direct organizational and operational policies of the club.

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

(10) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled one ounce quantities and has a meter which counts the number of pours served.

(11) "FAIR MARKET VALUE" means the price at which a willing seller and willing buyer will trade under normal conditions. It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. Rather, it is a fair, economic, just and equitable value under normal conditions.

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

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

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

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

(16) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association. A member and the member's spouse is entitled to all rights and privileges as provided by the club's bylaws or Utah law.

(17) "POINT OF SALE" means that portion of a package agency, restaurant, private club, or selling area for a single event permittee that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

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

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

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

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

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

(23) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: the consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others".

R81-1-3. General Policies.

(1) Administrative Policy.

The administration of the department shall be nonpartisan and free of partisan political influence, and operated as a public business using sound management principles and practices. The commission and department shall regulate the sale of alcoholic beverages in a manner and at prices which reasonably satisfy the public demand and protect the public interest including the rights of citizens who do not wish to be involved with alcoholic products.

(2) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor over 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(3) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in

conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(4) Manner of Paying Fees.

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

(5) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy.

(6) Interest Assessment on Delinquent Accounts.

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

(7) Returned Checks.

The department will assess a fifteen dollar charge for any check payable to the department returned for the following reasons:

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

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

(8) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made not less than 24 hours prior to the meeting.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-6.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their employees and agents who violate statutes and commission rules relating to alcoholic beverages. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee from holding the license. These are fundamental licensing requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing,

wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee to make payment on or before that date shall result in the immediate suspension of the license or permit until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to a three day suspension of the license or permit and/or up to a $300 fine. However, if the licensee or permittee commits more than three minor violations regardless of type, the commission may suspend the license or permit for a period exceeding three days, may revoke the license or permit, and/or impose a fine not to exceed $25,000. A record of any letter of admonishment shall be included in the licensee's or permittee's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine.

(iii) Third occurrence of the same type of minor violation: one to five day suspension of the license or permit and/or a $100 to $500 fine.

(iv) More than three minor violations regardless of type: six day suspension to revocation and/or a fine not to exceed $25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to a 20 day suspension of the license or permit. In lieu of or in addition to a suspension, a fine ranging from $300 to $2000 may be assessed. However, if the licensee or permittee commits more than three moderate violations regardless of type, the commission may suspend the license or permit for a period exceeding 20 days, may revoke the license or permit, and/or impose a fine not to exceed $25,000.

(i) First occurrence involving a moderate violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine.

(ii) Second occurrence of the same type of moderate violation: three to ten day suspension of the license or permit and/or a $500 to $1000 fine.

(iii) Third occurrence of the same type of moderate violation: ten to 20 day suspension of the license or permit and/or a $1000 to $2000 fine.

(iv) More than three moderate violations regardless of type: 21 day suspension to revocation and/or a fine not to exceed $25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, and involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit. In lieu of or in addition to a suspension, a fine ranging from $500 to $9000 may be assessed. However, if the licensee or permittee commits more than two serious violations regardless of type, the commission shall revoke the license or permit.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and/or a $500 to $3000 fine.

(ii) Second occurrence of the same type of serious violation: ten to 90 day suspension of the license or permit and/or a $1000 to $9000 fine.

(iii) Third occurrence of any type of serious violation: revoke license or permit.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a fine not to exceed $25,000. However, if the licensee or permittee commits more than one grave violation regardless of type, the commission shall revoke the license and permit.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a $1000 fine to the maximum fine authorized by law.

(ii) Second occurrence of any type of grave violation: revoke license or permit.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule.

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor					
1st	X	X			
2nd			100 to 500		
3rd			100 to 500	1 to 5	
Over 3			to 25,000	6 to	X
Moderate					
1st		X	to 1,000		
2nd			500 to 1,000	3 to 10	
3rd			1,000 to 2,000	10 to 20	
Over 3			to 25,000	21 to	X
Serious					
1st			500 to 3,000	5 to 30	
2nd			1,000 to 9,000	10 to 90	
3rd					X
Grave					
1st			1,000 to 25,000	10 to	X
2nd					X

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are be governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties. This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state. Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the assessment of costs of action, an order prohibiting an employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment

with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state. Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate respondent may be represented by a member of the governing board of the corporation, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation, or by an attorney.

(j) Presiding Officers. The commission or the director may appoint presiding officers to receive evidence in disciplinary actions, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(i) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(ii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iii) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(iv) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) expedite the proceedings.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the compliance section of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an employee or agent of a licensee, permittee, or certificate of approval holder, or against a

manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Designation of Informal Adjudicative Proceedings.

(i) All adjudicative proceedings conducted under this rule are hereby designated as informal proceedings.

(ii) If the decision officer determines that the alleged violation warrants commencement of adjudicative proceedings, the matter shall be referred to a presiding officer who shall commence informal adjudication proceedings.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5, and that an informal hearing will be held where the respondent and department shall be permitted to testify, present evidence and comment on the issues;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) The date, time and place of the scheduled informal hearing;

(H) A statement that a respondent who fails to attend or participate in the hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(d) if revocation is sought in the complaint;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional

pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(c) The Informal Hearing.

(i) The respondent and department shall be notified in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of a tape recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be available at the department for use by the respondent, but the original transcript or tape recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii)(iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, at its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action.

(H) A copy of the commission's order shall be promptly mailed to the respondent and the department.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within thirty days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

R81-1-8. Advertising.

(1) Preamble. The alcoholic beverage industry has often proclaimed its sense of responsibility for judicious handling of its products. Accordingly, the commission urges the industry to avoid any description of a situation that leads the reader or viewer to believe that the enjoyment of that situation is dependent upon the consumption of alcoholic beverages.

(2) General Provisions.

(a) Utah statutes and rules of the commission govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. The Federal Alcohol Administration Act, 27 U.S.C. 205(e) and (f), and federal

regulations, Subchapter A, Parts 4, 5, 6, and 7, of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury, as set forth in 27 CFR 4,5,6, and 7, (1993 Edition) are adopted and incorporated by reference to regulate the labeling and advertising of alcoholic beverages sold within this state, except where the provisions of the federal statute and regulations may be contrary to or inconsistent with the provisions of Utah statutes, or rules of the commission.

(b) No advertisement or promotional scheme involving alcoholic beverages which is primarily or especially appealing to minors is permitted. No advertisement or promotional scheme involving alcoholic beverages shall be placed with or appear in any school, college or university newspaper.

(c) No advertisement or promotional scheme involving alcoholic beverages that encourages over-consumption or intoxication such as "all you can drink for $...", or "happy hour" is allowed.

(d) No statements, pictures or illustrations advertising alcoholic beverages are allowed which include:

(i) persons with children and alcoholic beverages;

(ii) childhood figures or characters such as Santa Claus, or the Easter Bunny;

(iii) any reference to price, except:

(A) on displays in taverns and private clubs, if not visible to persons off-premises;

(B) on point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if not visible to persons off-premises;

(C) on menus and menu boards in retail establishments that sell beer for on-premise consumption; and

(D) on displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority, to inform attendees of the location where alcoholic beverages are being dispensed.

(iv) drinking scenes; or

(v) overt promotion of the consumption of alcoholic products.

Permission of the commission shall not be necessary for any advertisement otherwise complying with this rule.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses liquor in calibrated one ounce quantities; and

(b) has a meter which counts the number of pours served.

The margin of error of the system cannot exceed 1/16 of an ounce or two milliliter variation in pour size.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once the product is installed, the burden is on the licensee to maintain it to ensure that it continues to meet the manufacturer's specifications. Failure to maintain it may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a one ounce quantity of liquor. The calibration may not be changed or adjusted to pour any alternate quantity.

(b) Voluntary consent is given that representatives of the department, Utah Division of Investigations, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Liquor bottles in use with a remote liquor dispensing system must be in a locked storage area. Any other primary liquor not in service must remain unopened. There shall be no opened primary liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must conform to the federal Bureau of Alcohol Tobacco and Firearms (BATF) ruling 77-32 which states in part that bar dispensing systems for use by retail liquor dealers "(1) must avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle, (2) must not dispense from or utilize containers other than original liquor bottles filled, stamped, and labeled in conformity with ATF regulations, (3) must prohibit the intermixing of different kinds of products or brands in the liquor bottles from

which they are being dispensed...." BATF ruling 77-32 (1977) is incorporated by reference.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands and container sizes of liquor dispensed through the dispensing system;

(ii) number of one ounce portions dispensed through the dispensing system by brand or sales price level;

(iii) number of one ounce portions sold by brand or sales price level; and

(iv) beginning and ending meter readings by brand or sales price level to correlate with cost and sales totals by brand or sales price level. These records must be made available for inspection and audit by the department or law enforcement.

(h) Each licensee shall file with the department a complete price list which includes the selling price, by brand, of each mixed drink dispensed through a metered dispensing system. The licensee or his agent shall not:

(i) sell more than one mixed drink to a patron for a single price;

(ii) establish a single price based on the required purchase of more than one mixed drink; or

(iii) sell a mixed drink at a price that is reduced from the usual established price on the list the licensee has on file with the department.

This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains one ounce of primary liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both. No lists which are wall posted on the premises of a restaurant licensee may be larger than 8 1/2 by 11 inches.

A licensee or his employee shall not:

(i) sell or serve any brand of liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any liquor contained in any drink sold or offered for sale.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-10. Wine Dispensing.

(1) Each licensee shall keep daily records for each dispensing outlet as follows:

(a) brands and container sizes of each wine dispensed by the glass;

(b) number of five ounce portions dispensed of each wine by brand and sales price level; and

(c) number of five ounce portions sold by brand and sales price level.

These records must be made available for inspection and audit by the department or law enforcement.

(2) The licensee or his agent shall not:

(a) sell more than one five ounce glass of wine to a patron for a single price;

(b) establish a single price based on the required purchase of more than one five ounce glass of wine; or

(c) sell a five ounce glass of wine at a price that is reduced from the usual established price.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(36) shall include the location of any licensed restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(47) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9(4)(g) and R81-1-10(1) must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106(26)(27)(32), or 32A-5-107(11)(12)(15)(16)(17), or 32A-10-206(13);

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-8-402, shall be completed by every employee of every new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment for consumption on the premises. Employees must complete the training within six months of commencing employment. Each licensee shall maintain current records on each employee indicating: (1) date of hire, and (2) date of completion of training.

(2) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(3) Persons required to complete the seminar shall pay a fee to the seminar provider.

(4) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(3). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule, may be filed within 60 days of the effective date of this rule.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or

received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies any person, licensee, or, in the case of a partnership or a corporation, a partner, manager, officer, director, or shareholder with more than 20% of the issued and outstanding stock, from being an employee of the department, receiving a license, or being an employee of a licensee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; or

(c) any crime involving moral turpitude.

(2) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Purpose.

(a) Pursuant to actions taken on May 13, 1996, wherein the United States Supreme Court issued its ruling in 44 Liquormart, Inc. v. Rhode Island, 64 U.S.L.W. 4313 (1996), holding that a statute banning off-premises advertisement of liquor prices was a violation of the First Amendment right to freedom of commercial speech, and whereas on July 2, 1996, Utah Licensed Beverage Association v. Michael Leavitt et al, Civil No. 96-CV-581 S, was filed in the United States District Court, District of Utah, Central Division, naming the governor, attorney general, and the commission as defendants, and whereas plaintiffs seek to declare many of Utah's statutes and rules regulating alcoholic beverage advertising unconstitutional, this rule is promulgated to interpret currently applicable laws in a manner to preserve their constitutionality, and to identify such laws that the state will not enforce.

(b) No provision of this rule shall be construed as a

concession that any current law or rule is unconstitutional. To the extent any statute or rule is inconsistent with this rule, this rule shall govern.

(2) Definitions. For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) labels on products; or

(b) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(24), or liquor services, by retailers of such products including the department, state stores, package agencies, restaurants, airport lounges, private clubs, special use permittees, and single event permittees, or by manufacturers, suppliers, importers, wholesalers, or any of their affiliates, subsidiaries, officers, directors, agents, employees, or representatives of such products, are applicable and enforceable except as otherwise provided in this rule.

(5) By this rule, the statutory provisions of Sections 32A-4-106(21)(a) and (b), 32A-7-106(2)(m), 32A-12-401, and rule provisions of the Utah Administrative Code listed in R81-1-8, R81-4A-12 and R81-7-2, to the extent they restrict the advertising of beer, as defined in 32A-1-105(4), by manufacturers, wholesalers, or retailers of such products are suspended. Instead, all advertising of beer shall comply with the advertising requirements listed in Section (10) of this rule.

(6) Current statutes and rules restricting private club advertising calculated to increase club membership are applicable and enforceable.

(7)(a) All trade practice restrictions provided by Section 32A-12-603 regulating things of value that liquor, wine and heavy beer industry members, as that term is defined in 32A-12-601, may provide to liquor, wine and heavy beer retailers are applicable and enforceable.

(b) All trade practice restrictions provided by Section 32A-12-603 regulating things of value that beer industry members may provide to beer retailers are applicable and enforceable, with the following amendments:

(i) any on-premise beer retailer may be provided, receive and use things of value from beer industry members to the same extent authorized for any tavern licensee;

(ii) a restaurant liquor licensee may be provided, receive and use things of value from beer industry members to the same extent authorized for any beer licensee or permittee; and

(iii) product displays, inside signs, and retailer advertising specialties relating to beer products may be displayed to the extent authorized by this rule and federal law (see 27 CFR 6.84), to include being visible on and off the beer retailer's premise.

(8) All provisions of Section 32A-12-606 relating to unlawful acts involving consumers are applicable and enforceable.

(9) Rule R81-1-8 (e) and (f), and R81-7-2 are repealed.

(10) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (4);

(b) May not contain any statement that is false or misleading;

(c) May not contain any statement, design, device, or representation which is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct or illegal activity, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any promotional scheme such as "happy hour" or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by persons under the age of 21 years (minors);

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not contain claims or representations that individuals cannot obtain social, professional, educational, athletic, or financial success or status without alcoholic beverage consumption, or claim or represent that individuals cannot solve social, personal, or physical problems without such consumption;

(l) May not offer alcoholic beverages to the general public without charge;

(m) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(n) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(11) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and any criminal penalties authorized by the Utah Alcoholic Beverage Control Act.

R81-1-18. Pilot Wine Tasting Program.

(1) Purpose. To implement and operate a pilot program by which local industry representatives may conduct retail licensee tastings of cork-finished wines at the department's administrative office complex.

(2) Authority. The authority for this rule is Section 32A-12-603(20) of the Alcoholic Beverage Control Act.

(3) Definitions.

(a) "Local industry representative" or "representative" means an individual, corporation, partnership, or limited liability company licensed by the commission under Section 32A-8-501 to represent cork-finished wine products of a manufacturer, supplier, or importer with the department, package agencies, licensees and permittees in this state, or any of the representative's employees.

(b) "Promotional tasting of wines" means conduct statutorily prohibited by Sections 32A-8-505(2), (6), and (7), 32A-12-201, 32A-12-208, 32A-12-603, and 32A-12-606.

(c) "Promotional tasting of wines" does not include:

(i) conduct authorized or excepted by Sections 32A-1-501 through -504, 32A-12-603(2), (3), (9), (10), and (20), 32A-12-606; or

(ii) conduct otherwise specifically allowed by law.

(d) "Retailer" means the holder of a private club or restaurant liquor license issued by the commission under Chapters 32A-4 and 32A-5, or any of the club's or restaurant's employees.

(e) "DABC" means the Department of Alcoholic Beverage Control.

(4) Check-out procedures.

(a) All cork-finished wines used in this program shall be checked out by a local industry representative from the department's club and restaurant store located at 1675 South 900 West, Salt Lake City, Utah.

(b) The wines shall be checked out during the store's regular business hours, excluding any recognized state or federal holiday, and the day preceding the holiday. The representative shall allow at least 24 hours from the time the order is placed until the wine is checked out

(c) At the time of check-out, each representative shall sign a purchase form which shall include the representative's DABC license number, a list of the wines checked out, and a statement that the wines will be used only for tasting sessions conducted under this program. The form shall be in triplicate: one shall remain at the club and restaurant store; one shall accompany the wines when the representative checks them in at the tasting session; and one shall be the representative's receipt.

(d) Store personnel shall affix a bright colored label to each wine bottle which reads "Retailer Sample" to identify it for use in the pilot wine tasting program.

(e) Each representative shall pay full retail price (including markup and taxes) for each bottle of wine checked out.

(5) Special order and transfer procedures.

(a) Wines used in this program shall be products listed by the department or special ordered by the representative in accordance with department policy P96-03-04.

(b) No wines shall be transferred from other state liquor stores, but may be transferred from stock available in the central administrative warehouse, including special orders.

(6) Procedures for tasting sessions.

(a) All tasting sessions under this program shall be done in the department's administrative office building in rooms designated by the department.

(b) Sessions shall be held at least on a weekly basis on days and at times designated by the department.

(c) Representatives shall schedule a tasting session with the department at least one week in advance.

(d) Tasting sessions may be attended by representatives and their employees, manufacturers, suppliers, and importers; retailers and their employees; and supervisory staff of the department.

(e) The department may put a reasonable maximum limit on the total number of attendees.

(f) All persons attending the tasting other than department staff must sign an attendance form. Representatives and their employees, and retailers and their employees shall also enter their DABC license number on the form.

(g) The representative is responsible for transporting to the tasting session all wines checked out from the club and restaurant store. All wines checked out must be checked in to the department within seven (7) calendar days. The wines must be returned as a group and not piecemeal. The representative shall present a copy of the purchase form and pay the administrative per bottle fee set by the commission before

participating in the session.

(h) Once the wines are brought to the session, they shall be checked in by the department, and may not leave the premises of the department's administrative office building except for disposition by the department. The department shall store wines for representatives for use at future tasting sessions, but not more than seven days from the date of purchase. The department shall maintain a record of each bottle returned.

(i) The department shall provide tables for the tasting sessions.

(j) The representatives shall provide their own buckets, glasses, openers, napkins, and food for the tasting sessions.

(k) Participants shall follow accepted protocol for wine tasting, and may not consume the wine.

(l) Any tasting session is subject to video taping at the discretion of the department. No audio taping shall be done.

(m) The representatives are responsible for dumping buckets and unused portions of wine, and cleaning up the tasting area at the conclusion of each tasting session.

(n) The department shall dispose of the wine as provided in Section 32A-12-603(3)(j) or -603(6).

(7) Administrative fee. In addition to the full retail price, the commission shall set an administrative fee for each bottle purchased under this program, and may periodically review the fee to ensure that it is sufficient to defray the department's actual, ordinary, and necessary costs directly incurred in administering this program.

(8) Penalties for Non-Compliance. Any representative or retail licensee who engages or participates in any promotional tasting of wines at any location in the state other than as allowed under this program may have their license suspended or revoked.

(9) Report to Legislature. The commission shall prepare a report of the program and file it with the Legislature before November 1, 1999.

(10) Duration of program. This program shall be in effect from July 1, 1998.

KEY: alcoholic beverages

March 27, 2000	**32A-1-107**
Notice of Continuation January 10, 1997	**32A-1-119(5)(c)**
	32A-3-103(1)(a)
	32A-4-103(1)(a)
	32A-4-203(1)(a)
	32A-5-103(3)(c)
	32A-6-103(2)(a)
	32A-7-103(2)(a)
	32A-8-103(1)(a)
	32A-9-103(1)(a)
	32A-10-203(1)(a)
	32A-11-103(1)(a)

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

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

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

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

R131-1-2. Definitions.

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

(2) In addition:

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

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

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

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

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

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

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

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

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

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

(d) A brief description of the project; and

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

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

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

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

R131-1-6. Preliminary Screening and Evaluation.

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

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

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

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

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

(d) Proximity of firm to the project.

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

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

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

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

R131-1-8. Negotiation and Appointment.

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

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

R131-1-9. Role of the Board.

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

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

R131-1-10. Performance Evaluation.

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

R131-1-11. Emergency Conditions.

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

R131-1-12. Direct Awards.

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

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

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

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

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

R131-1-13. Small Purchases.

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

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

R131-1-14. Alternative Procedures.

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

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

KEY: architects, capitol-preservation, engineers, procurement

March 13, 2000 63C-9-101 et seq.

R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Facility Use.
R131-2-1. Purpose.

The purpose of this rule is to provide for use of the State Capitol Facilities for continued operation of state government.

R131-2-2. Authority.

This Rule is authorized under Section 63C-9-301, which authorizes the State Capitol Preservation Board to adopt rules governing, administering and regulating the State Capitol Hill Facilities and Grounds managed by the State Capitol Preservation Board.

R131-2-3. Definitions.

(1) In addition to terms defined in Section 63C-9-102,

(a) "Board" - means the Capitol Preservation Board including the administrative office of the Board.

(b) "Capitol Hill Facilities and Grounds" - includes the State Capitol Building and Grounds, State Capitol parking facilities, cafeteria, State Office building and grounds, and excludes the greenhouses.

(c) "Commercial Activities" - means any activity not meeting the above criteria. If it is determined that a Commercial Activity will include any kind of endorsements for commercial purposes of products or services, such as an advertising production, the application may be denied.

(d) "Community Service Activities" - means an activity closely related to community service activities including public awards, public recognition and public benefits.

(e) "Executive Director" - means the executive director appointed by the Board under Section 63C-9-401.

(f) "Facility Use Application" - means a form that is to be completed by a prospective user, and approved by a resident agency, to reserve space for activities held within state-owned facilities. It shall require submission of the following information: (i) prospective user's name, address, and telephone number; (ii) the name of the facility being requested; (iii) the type of activity; (iv) the dates and times of the function; (v) insurance company, name and policy number, unless applicant is seeking a waiver under rule R131-2-4(22); (vi) any other special considerations being requested.

(g) "Facility Use Permit" - means a permit issued to users authorizing the permitted person(s) to use state-owned facilities for designated activities. The permit shall include the following information: (i) the name of the organization and individual authorized to use designated facility; (ii) the facility designated for use; (iii) purpose for use of the facility; (iv) the dates and times of the activity; (v) the fee assessed for the activity; (vi) the permit number; (vii) information required for compliance with R131-2-4(18); and (viii) the authorized resident agency representative's signature authorizing the activity.

(h) "Fees" - means charges assessed for use of state-owned facilities. The fees shall be assessed as follows:

(i) "Freedom of Speech Activities" shall be assessed a fee using a base cost commensurate with actual cost to the state; The "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity.

(ii) "Commercial Activities" shall be assessed a fee comparable to fees charged for similar activities within the community; and

(iii) "Community Service Activities" shall be assessed a fee the same as first amendment activities.

The "Fee Schedule" is subject to change, and changes may be recommended to the Board by the Executive Director at any time. A fee schedule shall be provided to applicant at the time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.

(i) "Freedom of Speech Activities" - means an activity characterized as the right of a person or group to exercise freedom of speech or other first amendment right that is provided on government property by applicable law.

(j) "Governmental Activities" - means any activity directly related to governmental business. This does not include extra-curricular activities.

(k) "State" - means the state of Utah and any of its state officers, members of the legislature, members of the judiciary, departments, divisions, boards, agencies or commissions.

(l) "State Sponsored Activities" - means any activity directly sponsored by the state.

R131-2-4. General Provisions.

(1)(a) Each person(s) intending to use Capitol Hill Facilities and Grounds shall first submit a completed facilities-use-application. Applications shall be reviewed by the Board staff to determine the applicable category for activity-classification and fee-assessment. Applicants who disagree with any decision regarding activity-classifications or fees, may appeal using the process outlined in Rule R131-2-4(22).

(b) Upon approval of an application, the applicant shall schedule and obtain an authorization of activities in advance, from the Executive Director. The proposed activity shall not be authorized if it interferes with the operation of governmental business or public access.

(2) All rules in this section, apply to and cover the use of all Capitol Hill Facilities and Grounds.

(3) Users may schedule the Capitol Hill Facilities and Grounds for activities at reasonable times. Examples of activities at the Capitol Complex might include dances in the Rotunda, rallies on the front stairs of the Capitol and in designated areas on the grounds, and meetings in the State Office Building Auditorium.

(4) The state of Utah, any of its departments or divisions, any state employee shall not be responsible for any property damage or loss, any personal property damage or loss, or any personal injury sustained during, or as a result of, any activity.

(5) Every group granted a facility use permit will be required to complete an application form, provide the required fee, and provide a certificate of insurance showing proof of liability insurance in the amount of $1,000,000 per occurrence unless an exemption or waiver is granted by the board, or executive-director, in accordance with these rules.

(6) Users may not carry or post placards or signs attached to wood or metal posts of any type, within any building. In addition, users may not post signs on the grounds or the exterior of any building. Any signs or placards placed in Capitol Hill Facilities shall be hung with rope, cord or string. No adhesive materials or wire will be allowed. Balloons may be used but

need to be tied with string to banisters or railings; they may not be handed out to participants of the activity or let loose.

(7) No temporary structure of any kind shall be constructed on Capitol Hill properties without the express written consent of the Capitol Preservation Board or the Executive Director.

(8) The use or storage of alcoholic beverages or any unauthorized or controlled drugs in any state-owned facility or on state grounds is prohibited.

(9) All "No Smoking" ordinances, rules and policies shall be strictly observed in all Capitol Hill Facilities.

(10) To protect the beauty of the State Capitol, and Capitol Hill Facilities, all decorations used for a scheduled activity shall be of a temporary nature and shall be appropriate for the dignity and beauty of the structure and shall be approved by the Board or the Executive Director.

(a) No adhesive material may be used that would leave a glue, paste, tape, oil, paint or other residue on the building.

(b) Nothing may be used as a decoration or in the process of decorating that would cause damage to the structure.

(c) No markings, paint or sprays may be applied to any area of the building.

(d) Decorating during the normal work hours shall be done in a manner that limits any disturbance to normal building activities. Any decorating during other than normal hours must be coordinated with the Board or the Executive Director.

(e) Decorating is to be done in a safe manner, using proper tools and equipment.

(f) Users may not decorate on the outside of the State Capitol or Capitol Hill Facilities.

(g) Signs, posters, decorations, displays, or markings must comply with all current pornography ordinances of the jurisdiction in which the facility is located.

(11) Food services in conjunction with a permitted use in state-owned facilities is subject to the approval of the Board or the Executive Director.

(12) Parking is available at all state-owned facilities. Users shall observe, and Protective Services will enforce, all restricted and marked parking areas.

(a) Vehicles owned or under control of participants shall not be parked in reserved parking areas, which shall include the parking plaza on Capitol Hill, and shall not be allowed to remain overnight.

(13) The user shall be responsible for any personal injury, vandalism, damage, or loss or other destruction of property or premises incurred during the activity.

(14) Any animals must be specifically approved in advance by the Board or the Executive Director and must provide assurance of safety to the animal, participants and the facility.

(15) No open flame, flammable fluids, or explosives shall be brought to or used on the premises.

(16) A User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the Board or the Executive Director.

(17) No money may be collected at Capitol Hill Facilities and Grounds; all tickets, if required, must be pre-sold.

(18) Users and participants must abide by all applicable firearm laws, rules, and regulations.

(a) The Board reserves the right to require users to notify the appropriate security agent of the anticipated presence of any person with a weapon or firearm.

(19) These general rules are incorporated into any permit issued and into all rules governing use of any Capitol Hill facility.

(20) No equipment shall be used nor activity engaged in which is contrary to applicable rules, regulations or state, local or governmental ordinances or codes.

(21) No equipment shall be used nor activity shall be engaged in which will place an excessive stress load on the building structure or building systems.

(22) Exceptions and Waivers.

(a) State activities, its state officers, members of the legislature, members of the judiciary, departments, divisions, agencies, boards and commissions are exempt from fees and insurance requirements to the extent that the activity is covered by state Risk Management.

(b) Governmental activities are exempt from fee and insurance requirements to the extent that the activity is covered by state Risk Management.

(c) Freedom of speech activities - a waiver of the fee or insurance costs, or a part thereof, shall be provided for free speech activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director or the executive director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the decision within five days of the submission of the request for a waiver. The applicant may appeal and request to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any outside accessory items to the activity. The applicant may provide and use any accessory item for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah, including the current state provider of insurance.

(d) Community service activities - a waiver of the fee and/or insurance costs, or a part thereof, may be provided for community service activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee and/or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at

time of application and shall be promptly scheduled for an informal review before the Executive Director or his designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any accessory items to the activity. The applicant may provide and use own accessory items for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah including the current state provider of insurance.

(e) Commercial activities - no exceptions or waivers shall apply except the insurance may be waived if covered by State Risk Management. Adult chaperons will be required for commercial activities; the number, appropriate for the nature of the event and the number and ages of the users, will be determined by the Board or the Executive Director. Chaperons will help direct roaming guests. They will check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

R131-2-5. Use of Capitol Rotunda.

In addition to the provisions of Rule R131-2-4, the following rules for the Capitol Rotunda shall be observed:

(1) Public use of the Capitol shall not disrupt or interfere with any legislative session or state agency business. Safe, unhindered passageways must be provided at all times.

(2) A Facility Use request for permit for events in the Capitol Rotunda must be received in writing at least 24 hours in advance of the time the event is proposed to commence. Priority will be given to state departments, agencies, and public school districts for use of the Capitol Rotunda. The Rotunda is available six days a week, Monday through Saturday. The facility has an established Fire Marshal occupancy limit of 2,700 people which shall not be exceeded.

(3) The sound level of any individual or group, whether amplified or not, must not disrupt or interfere with any legislative session or state agency business.

(4) The second floor of the Rotunda, marble stairways, and third floor balcony are available for use but access to the fourth floor, first floor, and basement areas is not allowed.

(5) For use of committee rooms, House of Representatives Chamber, Senate Chambers, or the Supreme Court, requests must be made directly to those agencies for scheduling.

(6) No fire exits, which shall include staircases and doorways, shall be blocked during any activity. Tables shall not be placed in front of, or so as to block, doorways in any manner.

(7) All vehicles coming to Capitol Hill in conjunction with the activity shall park on the south side of the Capitol Building, on the circular drive south of the Capitol known as Cherry Lane, or in the small visitor parking area or the main parking lot directly east of the Capitol.

(8) All deliveries and movement of equipment shall come to the north loading entrance, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with the Board or the Executive Director.

(9) Elevators used to move equipment shall be protected from damage.

(10) All equipment brought into the building shall have rubber wheels, four inch or larger, or be hand carried so to cause no damage to facilities.

(11) Users shall remove all equipment, decorations and supplies by 12:00 midnight on the night of the activity unless specific arrangements are made in advance with the Board or the Executive Director.

(12) At least two uniformed security personnel are required for every 400 participants and will be included as a part of the base cost paid by user, unless a waiver is granted for unusual circumstances.

(13) State Capitol Protective Services personnel will determine the number of any or any additional uniformed security personnel needed for an activity, and will schedule their presence.

(14) Users shall control entrances to allow only those persons authorized to attend the activity to enter building.

(15) If any person or group is reasonably suspected of being in non-compliance with any of these rules, an appropriate State law enforcement officer may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement officer observes that an act of non-compliance continues after a warning, then a State law enforcement officer may have the person or group removed from the Capitol-Hill premises, and may take any other appropriate action as provided by law.

R131-2-6. Use of State Office Building Auditorium.

In addition to the provisions of rule R131-2-4, the following rules for the State Office Building Auditorium shall be observed:

(1) The Auditorium is available to all state departments and agencies on a first-come, first-served basis for meetings, public hearings, bid openings, lectures, training sessions, examinations and other similar activities. Agencies shall reserve the auditorium with the Executive Director.

(2) When not being used by a state agency, the Auditorium may be used by private or public organizations upon receipt of a permit from the Board or the Executive Director.

(a) The facility is available five days a week, Monday through Friday.

(3) After hours access shall be through the first floor south doors.

(a) The remainder of the building will be closed to the public.

(4) The Auditorium has an established Fire Marshal occupancy limit of 225 people which shall not be exceeded.

(5) All vehicles coming to Capitol Hill in conjunction with

the activity should park in the lot on the west side of the State Office Building.

(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only the Auditorium or rest room areas on the 1st floor of the State Office Building.

R131-2-7. Use of Capitol Hill Facilities and Grounds.

In addition to the provisions of rule R131-2-4, the following rules for the Capitol Hill Facilities and Grounds shall be observed:

(1) Camping is prohibited on the Capitol Hill Facilities and Grounds.

(2) When a permit is issued, the location of the activity will be specified. Participants will be required to contain the activity in the area specified in the permit.

(3) No activity on the grounds shall interfere with normal government or other facility use activities.

(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Hill Facilities and Grounds.

(5) No grass, plants, shrubs, trees, paving or concrete shall be disturbed, broken, removed or covered without the written permission of Board or the Executive Director.

(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only designated area and to insure that no damage occurs.

R131-2-8. Solicitation Policy.

(1) Definitions

(a) "Solicitation" means any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, sale or transfer of products, or services, or for the participation in a commercial venture of any kind.

(i) The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in paragraph 1 is construed as solicitation.

(2) Policy

(a) Solicitation, whether on-site or through establishment of an on-going delivery service, is prohibited on Capitol Hill Facilities and Grounds, except as listed in (c) below.

(b) No solicitation materials may be posted except on designated bulletin boards.

(c) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

(d) Any and all violations observed shall be reported immediately to Protective Services.

(3) Permissible Solicitation Activities: The following kinds of solicitation activities may be allowed access to Capitol Hill Facilities:

(a) Charitable campaigns (including blood drives, state United Way campaign, food banks, sub for Santa and other charitable activities).

(b) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity competitive teams.

(c) Announcements required by law or requested by a state agency in furtherance of official duties (including job announcements, EEO and OSHA notices).

(d) Activities conducted at the direction of the head of a state agency.

(e) Employees' sale of small craft items during breaks and lunch in employee lounges and break areas.

(f) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This exemption does not apply to conducting a business (such as Tupperware or Amway sales).

(g) Employee recognition events conducted by a state agency such as National Secretaries Week Luncheons which are approved by the supervisor of the employees affected.

R131-2-9. Waiver.

Notwithstanding any requirement of these Capitol Hill Facility Use Rules, a waiver may be requested in writing by the applicant as to it's necessity. The Capitol Preservation Board may disapprove the waiver request. If so, the Board shall issue a written statement that the strict holding of the required provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish, in a clear and concise statement, that the waiver should be granted. The request for waiver shall be included as part of the Facility Use Application and must provide the necessary information and documentation to support such waiver. The decision of the Facilities Management group may be appealed to the Board, in a way similar to the appeal of the denial of a Facility Use Application.

KEY: public buildings, facilities use
March 13, 2000 **63C-9-101 et seq.**

R131. Capitol Preservation Board (State), Administration.
R131-7. State Capitol Preservation Board Master Planning Policy.
R131-7-1. Purpose.

Pursuant to Section 63C-9-402, this rule provides a procedure for the Executive Director to devise and develop a master-planning process for Capitol Hill Facilities; for future capital facilities expansion of the state Capitol grounds, and for projected Capitol Hill facility growth needs.

R131-7-2. Authority.

This rule is authorized under Subsection 63C-9-402(1), which directs the Executive Director to develop, for board approval, a master plan for the state capitol facilities and grounds.

R131-7-3. Policy.

The Executive Director shall prepare annually, and maintain in current form, a 20-year Master Plan and a corresponding annual budget for all existing and planned capital facilities for the Capitol Hill facilities and grounds, which shall reflect maintenance, preservation, restoration, and modification considerations.

R131-7-4. Review of Plan.

The Board will review the State Capitol Preservation Master Plan and associated budgetary requirements at least once yearly, or whenever it considers requests for project funding. The Board, when requested, may also review any design or project, to assist the Executive Director in long-term planning efforts. The Master Plan shall be expected to reflect realistic budgetary perspectives, usage, deterioration, and expectation of future growth that affects projected needs of state Capitol Hill facilities and grounds.

R131-7-5. Coordination with State Budget Policy.

Following approval by the Board, the Executive Director will submit a summary of the Master Plan and annual budget to the Governor's Office of Planning and Budget, for inclusion into the Executive Branch budget, pursuant to Section 63-38-1, et seq., for submission to the Legislature.

KEY: planning-budgeting, state buildings, public buildings
March 13, 2000 63C-9-101

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. Peer or Advisory Committees - Executive Director to Appoint - 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 executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive 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 or advisory committee is appointed every two years.

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

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory 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.

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

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

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

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory 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.

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

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

(12) Peer or advisory 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 or advisory 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	December 31	even years
(72)	Professional Land Surveyor	December 31	even years
(73)	Professional Structural Engineer	December 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
March 20, 2000 58-1-106(1)
Notice of Continuation June 2, 1997 58-1-308

R162. Commerce, Real Estate.
R162-10. Administrative Procedures.
R162-10-1. Formal Adjudicative Proceedings.

10.1. Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

10.1.1. Except as otherwise expressly provided herein, the revocation, suspension or probation of a real estate license, school or instructor certification or fine levied against a licensee.

10.1.2. The revocation, suspension or probation of any registration issued pursuant to the Time Share and Camp Resort Act.

10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders.

R162-10-2. Informal Adjudicative Proceedings.

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.

10.2.3. The issuance of renewal or certification of real estate schools or instructors.

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.

10.2.5. The issuance, renewal, suspension or revocation of registration pursuant to the Land Sales Practices Act.

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation.

R162-10-3. Proceedings Not Designated.

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.

KEY: real estate business
March 20, 2000 **61-2-5.5**
Notice of Continuation December 1, 1995 **63-46b-1(5)**

R162. Commerce, Real Estate.
R162-106. Professional Conduct.
R162-106-1. Uniform Standards.

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all licensees must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All persons registered, licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005. Registered, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," State-Licensed Appraiser and "State-Registered Appraiser" shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number, license number or registration number must follow his name.

R162-106-3. Signatures, Size and Use of Seal.

106.3.1. State-Certified Appraiser's Seal.

106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).

106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted. The size of the seal, rectangular in shape, shall be no larger than two and seven-eighths inches long and five-eighths of an inch high including the border. An example of the seal shall be made available on request at the Division offices.

106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.

106.3.2. State-Registered and State-Licensed Appraisers. State-registered appraisers and State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.2.1. If a State-Registered Appraiser or a State-Licensed Appraiser prepares an appraisal report which exceeds the dollar amount permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations, the appraiser shall include after the appraiser's signature the words, "This appraisal does not qualify for federally related transactions."

106.3.2.1.1. This requirement does not apply if the State-Registered Appraiser or State-Licensed Appraiser has prepared the report under the direct supervision of a state-certified appraiser and the state-certified appraiser has signed the appraisal report taking responsibility for the report.

106.3.3. Signatures.

106.3.3.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.3.2. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-4. Testimony by an Appraiser.

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

R162-106-5. Failure to Respond to Investigation.

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, the notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

R162-106-6. Recordkeeping Requirements.

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

KEY: real estate appraisal, conduct
March 20, 2000 **61-2b-27**
Notice of Continuation April 1, 1997

R164. Commerce, Securities.
R164-2. Investment Adviser - Unlawful Acts.
R164-2-1. Investment Adviser Performance-Based Compensation Contracts.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets the requirements whereby an investment adviser may receive performance-based compensation for investment advisory services rendered.

(B) Definitions

(1) "Affiliate" has the same definition as in Section 2(a)(3) of the Investment Company Act of 1940, which is adopted and incorporated by reference and available from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

(4) "Interested person" means:

(4)(a) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(4)(b) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(4)(b)(i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser, or

(4)(b)(ii) 5% of the total assets of the person seeking to act as the client's independent agent; or,

(4)(c) any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Performance-based contract exemption

(1) Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs (D) through (I) of this rule are met.

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least $750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(E) Compensation formula

(1) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1)(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999) which is adopted and incorporated by reference and available from the Division, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(1)(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must include:

(1)(b)(i) the realized capital losses of securities over the period, and

(1)(b)(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and,

(1)(c) the formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed in accordance with subparagraphs (a) and (b) of this subparagraph (E), in the client's account for a period of not less than one year.

(F) Additional disclosure requirements

(1) Before entering into the advisory contract and in addition to the requirements of SEC Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(1)(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(1)(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(1)(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(1)(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and,

(1)(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 how the securities will be valued and the extent to which the valuation will be independently determined.

(G) Arms length agreement

(1) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subparagraph (B)(3) of this rule, the person representing the company, understands the proposed method of compensation and its risks.

(2) The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(H) Unlawful acts

(1) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Subsection 61-1-2(1) or any other applicable provision of the Utah Uniform Securities Act or any rule or order thereunder.

KEY: securities, securities regulation
March 20, 2000 **61-1-2**
61-1-24

R164. Commerce, Securities.
R164-4. Licensing Requirements.
R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "NASD" means the National Association of Securities Dealers.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of the NASD and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the CRD the license fee specified in the Divisions fee schedule before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must

file with the Division a written request for withdrawal or NASD Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(4) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(5) "NASAA" means the North American Securities Administrators Association, Inc.

(6) "NASD" means the National Association of Securities Dealers.

(7) "SEC" means the United States Securities and Exchange Commission.

(8) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit to the Division the following:

(1)(a) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV, with original signatures;

(1)(b) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC;

(1)(c) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official;

(1)(d) proof that applicant's designated official has passed the Series 65 or the Series 66 Exam; and

(1)(e) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit to the Division the following with original signatures as applicable:

(2)(a) NASD Form U-4;

(2)(b) proof applicant passed the Series 65 or the Series 66 Exam; and

(2)(c) a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following to the Division before December 31:

(2)(a) Division Form 4-1 IAR, Application for Renewal of Investment Adviser License;

(2)(b) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

(2)(c) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official);

(2)(d) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

(2)(e) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of $500 per client, or if the investment adviser has custody or possession of clients' funds or securities; and

(2)(f) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part II of Form ADV during the last calendar year of the licensing period.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser

representatives of a federal covered adviser, the federal covered adviser must submit the following to the Division before December 31:

(2)(a) Division Form 4-1 FIAR, Application for Renewal of Investment Adviser Representative License; and

(2)(b) a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the Division, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file a written request for withdrawal with the Division.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's written request for withdrawal, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "NASD" means the National Association of Securities Dealers.

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) Grandfathering

(3)(b)(i) Any individual who is licensed as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000 shall not be required to satisfy the examination requirements for continued licensure except that the Division may require additional examinations for any individual found to have violated state or federal securities law.

(3)(b)(ii) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the Division; and

(1)(e) an investment adviser representative must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(E) Designation of CRD

(1) The Division authorizes the CRD to receive filings on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) Documents filed with the CRD by licensees or applicants are deemed to be filed with the Division.

(3) The Division may request a copy of any document filed with the CRD. Failure to provide requested copies within a reasonable time after request may result in denial of the application.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities,

as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than $100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of $25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least $25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the

issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as in investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with the Division or the CRD the following with original signatures as applicable:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to the Division or the CRD, with original signatures as applicable, before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on

"Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or

appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

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R164. Commerce, Securities.
R164-14. Exemptions.
R164-14-1g. Exchange Listing Exemption.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(1)(g) and Section 61-1-24.

(2) The rule identifies additional exchanges for which the exemption under Subsection 61-1-14(1)(g) is available.

(3) The rule also states the procedure whereby confirmation of the availability of the exemption can be obtained.

(B) Definitions

(1) "Confirmation" means written confirmation of the exemption from registration from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exchange Tiers" means the different levels, groups or markets within an exchange or medium, whereby each level requires substantively different, as opposed to alternate and comparable, listing and maintenance criteria.

(4) "Exemption" means the exemption provided in Subsection 61-1-14(1)(g).

(C) Recognized exchanges

(1) As specifically provided in Subsection 61-1-14(1)(g), a security listed on one of the following exchanges or mediums is exempt from registration:

(1)(a) New York Stock Exchange

(1)(b) American Stock Exchange

(1)(c) National Association of Securities Dealers Automated Quotation System ("NASDAQ").

(2) In addition, a security listed on one of the following exchanges or mediums is exempt from registration:

(2)(a) Chicago Board Options Exchange

(2)(b) Pacific Stock Exchange

(2)(c) Philadelphia Stock Exchange

(3) A security listed on one of the following exchanges or mediums is exempt from registration for the limited purpose of nonissuer transactions effected by or through a licensed broker-dealer:

(3)(a) Boston Stock Exchange

(3)(b) Chicago Stock Exchange

(3)(c) NASDAQ Small Cap Market

(3)(d) Pacific Stock Exchange/Tier II

(3)(e) Philadelphia Stock Exchange/Tier II

(D) Listed securities

(1) As to securities listed with a recognized exchange or medium, the exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(E) Securities approved for listing

(1) A security which is "approved for listing upon notice of issuance" on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(F) Senior or substantially equal rank securities

(1) An unlisted security of the same issuer which is of senior or substantially equal rank to the security listed on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(G) Delisted or suspended securities

(1) If a listed security becomes delisted or suspended, the exemption is not available to the security or a senior or substantially equal rank security for the period during which the security is delisted or suspended.

(H) Requests for confirmation

(1) A confirmation from the Division may be requested by any person.

(2) The request for confirmation must include documentary proof of the listing or approval for listing upon notice of issuance with the recognized exchange or medium which is relied upon as the basis for the exemption.

(3) The required documentary proof must indicate, where applicable, that the listing is current and must include:

(3)(a) a signed copy of the listing agreement;

(3)(b) a copy of the receipt for payment; or

(3)(c) a signed copy of a letter from the recognized exchange or medium with which the security is listed which acknowledges listing and the effective date thereof, or acknowledges approval for listing upon notice of issuance.

(4) Each request for confirmation must include a filing fee as specified in the Division's fee schedule.

(5) In response to a complete request for confirmation, the Division will issue a letter confirming the availability of the exemption.

(6) The Division will issue a copy of the letter confirming the availability of the exemption to any person so requesting in writing or in person for the cost of the photocopying.

(I) Exchange tiers

(1) Except as provided in Subparagraph (I)(2) of this rule, where a recognized exchange or medium has more than one tier, the exemption applies only to the highest tier.

(2) The exemption applies to a lower tier of a recognized exchange or medium if the lower tier is specifically named in this rule.

R164-14-2b. Manual Listing Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(b) and Section 61-1-24.

(2) The rule specifies recognized securities manuals.

(3) The rule prescribes the information upon which each listing must be based to qualify for the exemption.

(4) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(b).

(4)(a) Except as provided in Paragraph (H), the exemption is not self-executing and may not be relied upon until the Division confirms the exemption as provided below.

(4)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(B) Definitions

(1) "Blank-check company" means a development stage

company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(b) of the Act.

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(10) "Significant change" means any change involving a reorganization, merger, acquisition, or other change which causes the issuer to increase its issued and outstanding shares of stock by at least 40% of the issued and outstanding shares before the change.

(C) Recognized securities manuals

(1) The Division recognizes the following securities manuals:

(1)(a) Standard and Poor's Corporation Records

(1)(b) Moody's Industrial Manual

(1)(c) Moody's Bank and Finance Manual

(1)(d) Moody's Transportation Manual

(1)(e) Moody's OTC Industrial Manual

(1)(f) Moody's Public Utility Manual

(1)(g) Moody's OTC Unlisted Manual

(1)(h) Moody's International Manual

(D) Information upon which listing must be based

(1) A listing must be based upon the following information, which must be filed with the selected recognized securities manual:

(1)(a) the issuer's name, current street and mailing address and telephone number;

(1)(b) the names and titles of the executive officers and members of the board of directors of the issuer;

(1)(c) a description of the issuer's business;

(1)(d) the number of shares of each class of stock outstanding at the balance sheet date; and

(1)(e) the issuer's annual financial statements as of a date within 18 months which have been prepared in accordance with generally accepted accounting principles, and audited by an independent certified public accountant who has issued an unqualified opinion; if the issuer has been organized for less than one year, the financial statements must be for the period from inception.

(E) Confirmation requirement

(1) Except as provided in Paragraph (H), confirmation must be obtained prior to relying upon the exemption.

(2) A request for confirmation must include:

(2)(a) all information filed with the selected recognized securities manual;

(2)(b) a copy of the listing with the recognized securities manual which is based upon the information filed under paragraph (D); and

(2)(c) a filing fee as specified in the Division's fee schedule.

(3) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(4) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(F) Term of exemption

(1) Except as provided in Subparagraph (F)(2), the exemption becomes effective on the date confirmed by the Division.

(2) The exemption for the securities of an issuer which qualify under Paragraph (H) becomes effective on the date a listing, based upon the information required under Paragraph (D), is published in a recognized securities manual.

(3) The exemption shall expire upon the earliest of:

(3)(a) A date 18 months from the date of the annual financial statements required under paragraph (D);

(3)(b) The date of a new annual issue or edition of the recognized securities manual which does not contain a listing based upon the information required under paragraph (D);

(3)(c) A date 45 calendar days from a change in the Chairman of the Board of Directors or a change in any two other members of the Board of Directors unless the recognized securities manual has published this information within the 45 days; or

(3)(d) A date 90 calendar days after a significant change in the issuer unless the recognized securities manual has published, at a minimum, an audited balance sheet and income statement reflecting the significant change within the 90 days.

(G) Blank-check, blind-pool, dormant, or shell company

(1) The exemption is not available to a blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal

years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) with the recognized securities manual, the information required under paragraph (D), as to all parties to such transaction;

(2)(b) with the Division, the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant or shell company; and

(2)(c) with the Division, the shareholders list of the company, current within thirty days of the request for confirmation of the exemption.

(H) Exceptions to confirmation requirement

(1) Confirmation prior to relying upon the exemption shall not be required for any security if at the time of the transaction:

(1)(a) the security is sold at a price reasonably related to the current market price of such security;

(1)(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(1)(c) the security has been outstanding in the hands of the public for at least 90 days;

(1)(d) the issuer of the security is a going concern, actually engaged in business and is not in the development stage, in bankruptcy or receivership;

(1)(e) the issuer of the security has been in continuous operation for at least five years; and

(1)(f) the information required by Paragraph (D) is contained in a recognized securities manual listed in Paragraph (C).

R164-14-2m. Secondary Trading Transactional Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(m) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(m).

(2)(a) The exemption is not self-executing. It may not be relied upon until the Division confirms the exemption as provided below.

(2)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(2)(c) The exemption is available only for transactions effected by or through a broker-dealer licensed with the Division.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(m).

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(C) Request for confirmation

(1) The broker-dealer or issuer should file a request for confirmation with the Division in advance of the expiration of the previous registration statement or exemption to provide the Division a reasonable period of time in which to review the request.

(2) A request for confirmation must include the information required in paragraph (D).

(3) A request for confirmation must include a fee as specified in the Division's fee schedule.

(4) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(5) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(D) Required information

(1) A reporting company which is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the preceding year must file one copy of the registration statement or the most recent Form 10-K which was filed with the Securities and Exchange Commission and containing financial statements dated not more than 15 months prior to this filing.

(2) A non-reporting company must file:

(2)(a) The following information:

(2)(a)(i) The exact name of the issuer and its predecessor(s), if any;

(2)(a)(ii) The street address of the issuer's principal executive offices;

(2)(a)(iii) The state of and date of incorporation or organization of the issuer;

(2)(a)(iv) The exact title and class of security for which the exemption is sought;

(2)(a)(v) The par or stated value of the security for which the exemption is sought;

(2)(a)(vi) The number of public, and restricted securities outstanding as of the end of the issuer's most recent fiscal year and a statement as to the date of the last fiscal year end;

(2)(a)(vii) The name and street address of the transfer agent for the securities for which the exemption is sought;

(2)(a)(viii) A description of the nature of the issuer's business;

(2)(a)(ix) A description of the products or services offered by the issuer;

(2)(a)(x) A description of the nature and extent of the issuer's facilities;

(2)(a)(xi) The names, titles and terms of office of the executive officers and members of the board of directors;

(2)(a)(xii) The names and street addresses of broker-dealers in Utah or associated person affiliated, directly or indirectly, with the issuer of the securities for which the exemption is sought.

(2)(b) Financial statements for the issuer's most recent fiscal year which meet all of the following requirements:

(2)(b)(i) be audited or reviewed by an independent Certified Public Accountant (CPA);

(2)(b)(ii) be prepared in conformity with Generally Accepted Accounting Principles (GAAP);

(2)(b)(iii) be prepared in conformity with Generally Accepted Auditing Standards (GAAS), Statements on Standards for Accounting and Review Services (SSARS), or both;

(2)(b)(iv) contain an unqualified audit opinion, where an audit is performed, except that certain qualifications may be allowed in certain circumstances at the discretion of the Division;

(2)(b)(v) contain an accountant's report stating that no material modifications are necessary for the financial statements to conform with GAAP, where a review is performed;

(2)(b)(vi) contain the signature of the preparer of the financial statements;

(2)(c) Financial statements of the issuer for the two fiscal years preceding the most recent fiscal year or for the time the issuer or its predecessor(s) has been in existence. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(d) Financial statements, dated within 30 days before the merger or acquisition, of the corporation, partnership, or proprietorship which was acquired by or merged with the issuer during the issuer's most recent fiscal year. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(e) A statement that the person submitting the information has read all of the information submitted and that to the best of his knowledge the information is accurate and complete;

(2)(f) If a broker-dealer is submitting the information, the original signature of the licensed official of the broker-dealer beneath the statement required by item (e) of this paragraph (D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(g) If an issuer is submitting the information, the original signature of a current executive officer or director of the issuer beneath the statement required by item (e) of this paragraph(D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(h) Copies of all complaints and orders with respect to material litigation that occurred during the past five years involving the issuer, the assets, liabilities, or both of the issuer, the securities of the issuer, or any officer or director of the issuer; and

(2)(i) Other documents as the Division may request.

(E) Amended information

(1) The required information filed pursuant to paragraph (D) may be amended by forwarding the correct information to the Division and requesting that the file be amended accordingly.

(2) If the amended information indicates that the issuer has changed its fiscal year, an amendment will not be permitted and the information will be treated as a new request for exemption.

(3) No fee is required for an amendment.

(F) Term of exemption

(1) The exemption becomes effective upon the date confirmed by the Division to the earliest of:

(1)(a) A date three months after the issuer's next fiscal year end; or

(1)(b) A date ten working days from the date of any shareholders meeting unless all material changes resulting from the meeting have been filed pursuant to paragraph (E); or

(1)(c) A date 30 calendar days from the date of any material change, not resulting from a shareholder vote, unless information with respect to the material change has been filed pursuant to paragraph (E).

(G) Blank-check, blind-pool, dormant, or shell company

(1) A blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division may not rely upon the exemption.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) the information specified in paragraph (D), as to all parties to the transaction;

(2)(b) the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant, or shell company; and

(2)(c) the shareholders list of the company current within thirty days of the request for confirmation of the exemption.

(H) Miscellaneous

(1) The information contained in broker-dealers' files and the information which they use to solicit transactions relying upon the exemption must be kept current.

(2) In no event does compliance with the requirements of this rule relieve broker-dealers or their agents from any obligations imposed by Section 61-1-1 or 61-1-6 or the rules thereunder.

R164-14-2n. Uniform Limited Offering Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(n) and Section 61-1-24.

(2) Nothing in this rule is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of Section 61-1-1.

(3) In view of the objective of this rule and the purposes and policies underlying Section 61-1-1 et seq., the safe-harbor exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

(4) Nothing in this rule is intended to relieve a licensed broker-dealer or broker-dealer agent from the due diligence, suitability, know-your-customer standards, or any other requirements of state or federal law otherwise applicable to such licensed persons.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Safe-harbor exemption" means the exemption provided in this rule.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Safe-harbor exemption

Any offer or sale of securities offered or sold in compliance with SEC Rule 505, Exemption for Limited Offers and Sales of Securities Not Exceeding $5,000,000, 17 CFR 230.505 (1993), including any offer or sale made exempt by application of SEC Rule 508, Insignificant Deviations from a Term, Condition or Requirement of Regulation D, 17 CFR 230.508 (1993), which are adopted and incorporated by reference and available from the SEC and the Division, and which offer or sale of securities satisfies the following further conditions and limitations is determined to be exempt from the registration requirement of Section 61-1-7:

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately licensed with the Division.

(a) It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately licensed with the Division.

(2) The safe-harbor exemption shall not be available for the securities of any issuer if any of the parties described in SEC Rule 262, Disqualification Provisions, 17 CFR 230.262 (1994), which is adopted and incorporated by reference and available from the Division:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law.

(b) Has been convicted within five years prior to the filing of the notice required under this rule of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this rule or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this rule.

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

(e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this rule.

(f) The prohibitions of Subparagraphs (a) through (c) and (e) above shall not apply if the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed with the Division and SEC Form BD - Uniform Application for Broker-Dealer Registration, July 1988, filed with the CRD discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed.

(g) Any disqualification caused by this paragraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines that it is not necessary that the safe-harbor exemption be denied.

(h) It is a defense to a violation of this paragraph if issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(D) Notice requirement

(1) The issuer shall file with the Division:

(a) One manually-signed copy of SEC Form D, 17 CFR 239.500 (1993), no later than 15 days after the first sale of securities in Utah in reliance upon this safe-harbor exemption and at such other times and in the form required to be filed with the Securities and Exchange Commission under SEC Rule 503, Filing of Notice of Sales, 17 CFR 230.503 (1993);

(b) One copy of the information furnished by the issuer to offerees located within the state;

(c) NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division; and

(d) A fee as specified in the Division's fee schedule.

(2) Within 30 days after termination of the offering the

issuer shall file with the Division one completed Division Form 14-2n, Uniform Limited Offering Exemption Final Report.

(E) Sales to nonaccredited investors

(1) In all sales to nonaccredited investors in this state one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(a) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(b) The purchaser either alone or with a representative has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(F) Effect upon exemption from Section 61-1-7 of failure to comply with certain provisions

A failure to comply with a term, condition or requirement of Subparagraph (C)(1) or Paragraphs (D) or (E) of this rule will not result in loss of the exemption from the requirements of Section 61-1-7 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1), or Paragraphs (D) or (E) of this rule.

(G) Limitation of exemption established in reliance upon Paragraph (F)

Where an exemption is established only through reliance upon Paragraph (F) of this rule, the failure to comply shall nonetheless be actionable by the director under Section 61-1-14 or 61-1-20.

(H) Prohibition against combining exemption with other exemptions

Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this safe-harbor exemption, the issuer may claim the availability of any other applicable exemption.

(I) Authority to modify or waive conditions

The director may, by order, increase the number of purchasers or waive any other conditions of this safe-harbor exemption.

(J) Title

The safe-harbor exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

R164-14-2p. Reorganization Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(p) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the exemption contained in Subsection 61-1-14(2)(p). The exemption is not self-executing.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Exemption" means the exemption provided in Subsection 61-1-14(2)(p).

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Filing Requirements

Persons whose security holders are to consent, vote or resolve as to a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets may claim the exemption by filing with the Division, not less than ten business days prior to any necessary vote or action on any necessary consent or resolution, all of the following:

(1) the proxy or informational materials required by Paragraph (D);

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a fee as specified in the Division's fee schedule; and

(4) other documents as the Division may request.

(D) Proxy or informational materials

The Proxy or informational materials to be filed with the Division pursuant to Subparagraph (C)(1) and distributed to all securities holders entitled to vote in the transaction or series of transactions shall be:

(1) the proxy or informational materials filed under Section 14(a) or (c) of the Securities Exchange Act of 1934 if any person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 and has so filed;

(2) the proxy or informational materials filed with the appropriate regulatory agency or official of its domiciliary state if any person involved in the transaction is an insurance company who is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934; or

(3) one manually signed Form 14-2p and the information specified in SEC Schedule 14A, Form S-4, or Form F-4 if all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934.

(E) Transactions eligible for exemption

For purposes of Subsection 61-1-14(2)(p)(i), "each person involved" includes each person whose securities are offered or sold to or purchased from the securities holders of such persons.

R164-14-2s. MJDS - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides a secondary trading exemption for securities offered by Canadian issuers which have been offered in the United States pursuant to MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in any class of a Canadian issuer's security which has been offered pursuant to Section 61-1-9 and MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC and the Division.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-21s. Solicitations of Interest Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) The rule enables an issuer to solicit indications of interest in a future offering of securities by the issuer to determine the likelihood of success of the offering before incurring costs associated with registering the offering.

(3) All communications made in reliance on this rule are subject to the anti-fraud provisions of Section 61-1-1.

(4) The Division may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

(5) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 61-1-22. Likewise any misrepresentation or omission may give rise to civil liability. Under the Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Director" means the director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Requirements

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from Section 61-1-7, if all of the following conditions are satisfied:

(1)(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(1)(b) The issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described;

(1)(c) The offerer intends to register the security in this state and conduct its offering pursuant to either SEC Regulation A, Conditional Small Issues Exemption, 17 CFR 230.251 through 17 CFR 230.263 (1995), SEC Rule 504, Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000, 17 CFR 230.504 (1995), or SEC Rule 147, "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11), 17 CFR 230.147 (1995), which are incorporated by reference;

(1)(d) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the Division, Form 14-21s, Solicitation of Interest Form, any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published, and a fee as specified in the Division's fee schedule;

(1)(e) Five (5) business days prior to usage, the offerer files with the Division any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(1)(f) No Solicitation of Interest Form, script, advertisement or other material can be used to solicit indications of interest unless approved by the Division;

(1)(g) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days from the communication;

(1)(h) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(1)(i) No sale is made until seven (7) calendar days after delivery to the purchaser of a final prospectus or in those instances in which delivery of a preliminary prospectus is allowed, a preliminary prospectus; and

(1)(j) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(1)(j)(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form;

(1)(j)(ii) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(1)(j)(iii) Is currently subject to any federal or state administrative enforcement order or judgment entered by any

state securities administrator or the SEC within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(1)(j)(iv) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(1)(j)(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(2) The prohibitions listed in Subparagraph (C)(1)(j) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing the party is licensed in this state and the SEC Form BD - Uniform Application for Broker-Dealer Registration, filed with this state discloses the order, conviction, judgment or decree relating to the person. No person disqualified under subparagraph (C)(1)(j) may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by subparagraph (C)(1)(j) is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(3)(a) A failure to comply with any condition of Subparagraph (C)(1) will not result in the loss of the exemption from the requirements of Section 61-1-7 for any offer to a particular individual or entity if the offerer shows:

(3)(a)(i) the failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(3)(a)(ii) the failure to comply was insignificant with respect to the offering as a whole; and

(3)(a)(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1).

(3)(b) Where an exemption is established only through reliance on Subparagraph (C)(3)(a), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under Section 61-1-20 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Section 61-1-7, but shall be a violation of the Act, be actionable by the Director under Section 61-1-20, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4)(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(4)(a)(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(4)(a)(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(4)(a)(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4)(a)(iv) THIS OFFER IS BEING MADE PURSUANT TO THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION IF MADE PURSUANT TO REGULATION A, AND IS REGISTERED IN THIS STATE;

(4)(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule; and

(4)(c) A preliminary prospectus, or its equivalent, may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(5) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(6) Offers made in reliance on this rule will not result in a violation of Section 61-1-7 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Subsections 61-1-14(2)(i), 61-1-14(2)(n) or 61-1-14(2)(q) until six (6) months after the last communication with a prospective investor made pursuant to this rule.

R164-14-23s. Foreign Securities - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for secondary market

transactions in securities offered by foreign issuers satisfying the requirements of this rule.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in an outstanding security issued by any corporation organized under the laws of a foreign country with which the United States currently maintains diplomatic relations (or an American Depository Receipt relating to such a security), provided either:

(1)(a) the security appears in the most recent Federal Reserve Board List of Foreign Margin Stocks;

(1)(b) the issuer is currently required to file with the Securities and Exchange Commission information and reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 and is not delinquent in such filing; or

(1)(c) the issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 and all of the following conditions are met:

(1)(c)(i) the issuer, including any predecessors, has been in continuous operation for at least 5 years and is a going concern actually engaged in business and neither in the organization stage nor in bankruptcy or receivership;

(1)(c)(ii) the number of shares outstanding is at least 2,500,000 and the number of shareholders is at least 5,000;

(1)(c)(iii) the market value of the outstanding shares, other than debt securities and preferred stock, is at least U.S. $100 million;

(1)(c)(iv) the issuer, as of the date of its most recent financial statement, which may not be more than 18 months old and which has been audited in accordance with the generally accepted accounting principles of its country of domicile, has net tangible assets of at least U.S. $100 million;

(1)(c)(v) the issuer had net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either

(1)(c)(v)(aa) at least U.S. $50 million in total for its last three fiscal years, or

(1)(c)(v)(bb) at least U.S. $20 million in each of its last two fiscal years; and

(1)(c)(vi) if the security is a debt security or preferred stock, the issuer has not during the past 5 years, or during the period of its existence if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-24s. Internet Solicitations Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers effected through the Internet which do not result in sales in Utah.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Offer" means a communication, regarding the offering of securities within the meaning of Subsection 61-1-13(20)(b), made on the Internet and directed generally to anyone who has access to the Internet, including persons in Utah.

(C) Exemption

(1) The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

(1)(a) an offer is not specifically directed to any person in Utah;

(1)(b) the Internet Offer indicates that the securities are not being offered to and sales will not be effected with persons in Utah; and

(1)(c) no sales of the issuer's securities are made in Utah as a result of the Internet Offer.

R164-14-25s. Accredited Investor Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers and sales to accredited investors. The rule also permits a limited use advertisement.

(B) Definitions

(1) "Accredited Investor" means an accredited investor as defined in 17 CFR 230.501(a) which is incorporated by reference.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exemption" means the exemption provided in Subsection 61-1-14(2)(s).

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors pursuant to Section 61-1-14(2)(s) in connection with any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule.

(D) Purchaser qualifications

Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(E) Issuer Limitations

The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(F) Investment Intent

The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months

of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Section 61-1-8, 61-1-9, or 6-1-10 or to an accredited investor pursuant to an exemption under Section 61-1-14.

(G) Disqualifications

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (G)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (G).

(H) General Announcement

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Division:

(2)(a) The name, address and telephone number of the issuer of the securities;

(2)(b) The name, a brief description and price (if known) of any security to be issued;

(2)(c) A brief description of the business of the issuer in 25 words or less;

(2)(d) The type, number and aggregate amount of securities being offered;

(2)(e) The name, address and telephone number of the person to contact for additional information; and

(2)(f) A statement that:

(2)(f)(i) sales will only be made to accredited investors;

(2)(f)(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(2)(f)(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(I) Additional Information

The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (H), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(J) Telephone Solicitations

No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(K) Effect of dissemination of general announcement to nonaccredited investors

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(L) Filing Requirements

The issuer shall file with the Division, within 15 days after the first sale in Utah:

(1) one manually signed Form 14-25s, Accredited Investor Exemption Uniform Notice of Transaction Form;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a copy of the general announcement; and

(4) a fee as specified in the Division's fee schedule.

R164-14-26s. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(2).

(5) This exemption is self-executing and requires no filing

with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27s. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation

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R277. Education, Administration.
R277-501. Educator Licensing Renewal.
R277-501-1. Definitions.

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Active educator" means an individual holding a valid license issued by the Board who is employed by a unit of the public education system or an accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle.

C. "Active license" means a license that is currently valid for service in a position requiring a license.

D. "Approved Inservice" means training, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

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

F. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

G. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, certificates shall be maintained by the educator in the educator's Utah Educator License Renewal Folder;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

H. "Educational research" means conducting educational research or investigating education innovations.

I. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a unit of the public education system or an accredited private school in a role covered by the license for less than three years in the individual's renewal period.

J. "Inactive license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

K. "Level 1 license" means a license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule; and

(2) three years of successful education experience within a five-year period.

M. "Level 3 license" means a license issued to an educator who holds a current Utah Level 2 license and has also received National Board certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

N. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

O. "One half time contract position" means less than full time (minimum 990 hour contract position) but at least one half time (minimum 495 hour contract position) employment as an educator in a unit of the public education system or an accredited private school for one school year, or full time for at least one half of the school year.

P. "Professional activities in an educational institution" means active participation in an educational institution consistent with the standards of this rule.

Q. "Professional development plan" means a document prepared by the educator consistent with this rule.

R. "Professional development or license points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

S. "Utah Educator License Renewal Folder" means the folder provided by the USOE or school districts for educators to collect and track professional activities for purposes of license renewal. The license renewal folder may also be developed by an educator upon his own initiative and in an individual format, but shall include adequate documentation of participation in activities approved under this rule.

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

U. "Verification of employment" means official documentation of employment as an educator.

R277-501-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, 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 definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

R277-501-3. Categories of Acceptable Activities for an Educator with an Active License.

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Inservice:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation.

D. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

E. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

F. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development credit on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

G. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educators's principal/supervisor.

(3) One license point is awarded for each clock hour of participation.

H. Substituting in a unit of the public education system or an accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501B and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn a maximum of 50 professional development points during the renewal period as a substitute.

I. Up to 50 license points may be earned in any one or any combination of categories D, F and G above.

R277-501-4. Required Renewal License Points for Designated License Holders.

A. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

B. Level 1 license holder with one year licensed educator experience within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

C. Level 1 license holder with two years licensed educator experience within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

D. Level 2 license holder:

(1) An active educator shall earn at least 100 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year within a five year period shall earn 160 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years within a five year period shall earn 120 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

E. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree in education or in a field related to a content area in a unit of the public education system or an accredited private school shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the

USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. Level 2 active educators:

(1) A licensed educator whose license expires June 30, 2001 shall earn 20 license points between July 1, 1999 and June 30, 2001 and shall provide verification of employment.

(2) A licensed educator whose license expires June 30, 2002 shall earn 40 license points between July 1, 1999 and June 30, 2002 and shall provide verification of employment.

(3) A licensed educator whose license expires June 30, 2003 shall earn 60 license points between July 1, 1999 and June 30, 2003 and shall provide verification of employment.

(4) A licensed educator whose license expires June 30, 2004 shall earn 80 license points between July 1, 1999 and June 30, 2004 and shall provide verification of employment.

(5) A licensed educator whose license expires June 30, 2005 shall earn 100 license points between July 1, 1999 and June 30, 2005 and shall provide verification of employment.

B. Level 2 inactive educators:

(1) A licensed educator whose license expires on June 30, 2001 shall earn 40 license points between July 1, 1999 and June 30, 2001.

(2) A licensed educator whose license expires on June 30, 2002 shall earn 80 license points between July 1, 1999 and June 30, 2002.

(3) A licensed educator whose license expires on June 30, 2003 shall earn 120 license points between July 1, 1999 and June 30, 2003.

(4) A licensed educator whose license expires on June 30, 2004 shall earn 160 license points between July 1, 1999 and June 30, 2004.

(5) A licensed educator whose license expires on June 30, 2005 shall earn 200 license points between July 1, 1999 and June 30, 2005.

R277-501-6. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor.

(6) If an educator is not employed in education at the renewal date, the educator shall:

(a) review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form, or

(b) review the professional development plan and personally sign the verification form.

B. Each Utah license holder shall be responsible for maintaining a professional development folder.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development folder shall be retained by the educator for a minimum of two renewal cycles.

C. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, Salt Lake City, Utah 84111 between January 1 and June 30 of the renewal year.

(1) Forms that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may review or audit verification for license renewal forms or education license renewal folders upon request.

D. License holders may begin to acquire professional development points under this rule as of July 1, 1999.

E. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

F. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development credit should not be assumed to be credit for school district purposes, such as salary or lane change credit.

G. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status. Educators with active licenses shall not be charged a renewal fee.

H. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

I. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999, the effective date of R277-521.

(2) All specialists shall be considered Level 1 license holders.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

KEY: educational program evaluations, educator license renewal*

March 3, 2000 **Art X Sec 3**
53A-6-104
53A-1-401(3)

R277. Education, Administration.
R277-607. Truancy Prevention.
R277-607-1. Definitions.

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Certified mail" means notification sent through the U.S. Post Office, that requires a signature of acceptance for the letter. A signed receipt notifies the sender that the letter was accepted.

C. "Excused absence" means a student's absence from school for a reason identified by the school or district as reasonable such as:

(1) illness;

(2) medical appointments;

(3) family emergencies;

(4) death of family member or close friend;

(5) family activity or travel, consistent with district/school policy.

D. "Habitual truant" means a school-aged minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities to resolve a student's attendance problems as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

E. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

F. "Truancy citation" is a ticket issued in the truant's name under R277-609 or Section 53A-11-105(1). A truancy citation is issued by school designated individuals and may provide for administrative penalties, strict attendance by the student and monitoring by the school, or may be payable to the school or school district. Penalties or requirements that may result from a truancy citation shall be clearly stated in the school or district truancy policy.

G. "Truancy fee schedule" means a uniform payment schedule set by a local school board consistent with R277-609-5.

H. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the school or district policy.

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

R277-607-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Sections 53A-11-101 through 53A-11-105 which direct educational entities and designated agencies working on behalf of children to encourage compliance with the compulsory education law and regular school attendance for all students.

B. The purpose of this rule is to establish consistent procedures for school districts in informing parents about compulsory education laws, encouraging and monitoring school attendance consistent with the law, and providing firm consequences for noncompliance. This rule encourages meaningful incentives for parental responsibility and directs districts to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Local school boards shall develop a truancy policy consistent with this rule and 53A-11-101 through 53A-11-105 and shall review the policy annually.

B. The local school board truancy policy shall be available for review by parents or interested parties upon request.

C. Truancy citation fees are not subject to fee waivers provisions because truancy citations are similar to repayment for destruction of school property. Also, schools or districts shall provide reasonable and specific options in lieu of payment for truancy citations at parent/school meetings.

D. If a student moves from one Utah school district to another Utah school district, truancy citations issued consistent with this rule may follow the student at the receiving school district's discretion.

E. A truancy citation issued by law enforcement under Section 53A-11-105(1) may be viewed as a truancy citation in designating a student a habitual truant. If a district does so, the parent shall be notified of receipt of the citation, including a copy of the citation, in a timely manner.

F. Districts shall prepare an annual fiscal year-end report to be submitted to the USOE that includes:

(1) copy of the district truancy policy required under Section R277-607-3A;

(2) total number of students designated as habitual truants;

(3) total number of students tracked or disciplined under the district's attendance/truancy policy;

(4) total amount of funds collected, if any, by school from truancy citations; and

(5) summary of program effectiveness.

R277-607-4. Procedures Toward the Designation of Habitual Truant Status.

A. Prior to or no later than school registration, the parent(s) of all students in grades 1-12 shall be provided written notice from the school or district informing parents of Compulsory Education attendance laws and encouraging parental cooperation.

(1) A student registering in the school district during the school year shall be provided written notice explaining the school and school district's compulsory education policy.

(2) A student moving from one school to another within the same district may be provided written notice explaining the school and school district's compulsory education policy.

B. Following two unexcused absences in a six week period, the individual designated by the school shall counsel the parent(s)/student as to the importance of school attendance and the legal implications of truancy.

C. Following four additional unexcused or six excused absences in a subsequent six week period, the individual designated by the school shall contact the parent(s) and arrange for a meeting at the school or elsewhere to discuss the student's attendance problem.

D. Following the seventh unexcused absence within a total 12 week period, a certified letter shall be sent requesting again the support of the parent(s) in resolving the attendance problems and outlining the requirements of Section 53A-11-103.

E. The school shall continue to monitor school attendance following the first truancy citation. If appropriate, the student's curriculum or schedule may be adjusted.

F. If there is an eighth unexcused absence within a total 14 week period, a second truancy citation shall be issued. Following the second truancy citation, prior to the referral to court, in a final attempt to prevent habitual truancy, the school shall schedule a pre-court hearing meeting with the second truancy citation for the parent and student. At the meeting, school personnel shall present final alternatives to court referral.

G. Following the ninth unexcused absence, a third truancy citation shall be issued and the parent/student shall be notified that the student is a habitual truant. Referral to the appropriate County or District Attorney or Juvenile Court consistent with Section 53A-11-104(6) shall be made by the individual designated by the school/district.

H. The school district may work with appropriate courts and personnel to develop procedures to track students and encourage school attendance.

I. If students with disabilities under the Individuals with Disabilities Education Act (IDEA) or students protected under Section 504/ADA of the Rehabilitation Act have excessive absences and fall within the criteria of this rule, the student's IEP team (IDEA) or school team (Section 504) shall ensure that the procedures of this rule apply consistent with state and federal law and regulations.

J. The parent shall have the right to appeal a truancy citation consistent with district administrative policy and time limits established by the district policy and legal due process.

R277-607-5. Documentation and Variances.

A. When a student is referred to court as a habitual truant, the school/district shall make a recommended disposition to the court which shall include:

(1) documentation of attendance and academic achievement;

(2) documentation of school efforts to improve attendance;

(3) copies of truancy citations, including all mailing certificates; and

(4) student background as requested by the prosecuting agency.

B. Copies of truancy citations shall be retained in the student's permanent record.

C. A school district may develop a truancy policy that varies from this rule, but that is consistent with Section 53A-11-101 through 105 and the intent of the law and this rule.

(1) Timelines and numbers of absences between citations may vary, but basic due process requirements of notice to parents of the policy, notice as discipline or consequences progress and an opportunity to appeal disciplinary measures, as appropriate, shall be provided for in the policy.

(2) Districts may have different policies for elementary, middle/junior high and high schools so long as basic due process requirements are satisfied.

KEY: compulsory education, truancy
March 3, 2000 **Art X Sec 3**
53A-1-401(3)
53A-11-101 through 53A-11-105

R277. Education, Administration.
R277-904. Applied Technology Center and Service Region Standards and Operating Procedures.
R277-904-1. Definitions.

A. "Adult ATC/ATCSR student" means a student enrolled in an approved applied technology center or service region program who is not at the same time enrolled in a regular high school program.

B. "Applied technology instruction" means instruction approved by the Board and the State Board of Regents through the Joint Liaison Committee, identified by a Classification of Instructional Programs (CIP) code number, which is designed to prepare individuals for gainful, entry-level employment in occupations requiring other than a baccalaureate or higher degree. The instruction may include:

(1) hands-on skills training in a laboratory or on the job;

(2) classroom instruction necessary to support skills training;

(3) programs that provide occupational work experiences including job shadowing, internships, apprenticeships and their related instructional aspects.

(4) remedial programs designed to correct education deficiencies or disabilities that prevent students from successfully completing their training;

(5) activities of applied technology student leadership organizations that are an integral part of the applied technology instruction; and

(6) Custom Fit training which may or may not have CIP codes.

C. "Applied technology center or ATC" means a facility approved by the Board and the Legislature to offer applied technology instruction and related services to secondary and non-degree seeking adult students.

D. "Applied technology center service region or ATCSR" means an entity provided facilities by school districts and/or higher education institution(s), recognized by the Board and the Legislature, and coordinated with the State Board of Regents through the Joint Liaison Committee to offer applied technology instruction and related services to secondary and non-degree seeking adult students.

E. "ATC/ATCSR board" means applied technology center or applied technology center service region board.

F. "ATC/ATCSR executive officer" means applied technology center superintendent or applied technology center service region director.

G. "ATC/ATCSR region" means a group of school districts and higher education institution(s) assigned by the Board and the State Board of Regents through the Joint Liaison Committee to an applied technology center or applied technology center service region.

H. "Board" means the Utah State Board of Education/Utah State Board for Applied Technology Education.

I. "Independent auditor" means an auditor selected by each ATC/ATCSR or the ATCSR fiscal agent as selected through the State Auditor's Office bid procedures.

J. "Joint Liaison Committee" means a committee comprised of members of the Board and the state superintendent, members of the Utah State Board of Regents and the commissioner, and business and industry members, co-designated in Section 53A-1-501.

K. "Occupational upgrade" means additional job training for a currently employed individual.

L. "Open-entry/open-exit" means enrolling students, providing testing and assessment services, conducting applied technology instruction, and offering support services on the basis of individual rates and needs at any time during the calendar year instead of pre-set dates such as the traditional school semester or quarter.

M. "Regions" means the nine groupings of school districts, applied technology centers or service regions, and higher education institutions as defined by the Board and the Utah State Board of Regents through the Joint Liaison Committee.

N. "Region master planning committee" means the group of individuals designated by the state applied technology master plan to develop an annual regional applied technology master plan which includes the regional operation of applied technology programs by school districts, applied technology centers or service regions, and higher education institutions. One member shall be designated by the committee as the regional chairperson.

O. "SEOP" means student education occupation plan which is cooperatively developed by the student, the student's parent(s)/guardian(s), and designated school personnel. The plan is guided by general Board requirements and individual student interests and goals.

P. "State applied technology education master plan" means the annually updated resource manual approved by the Board and the Utah State Board of Regents through the Joint Liaison Committee for the planning and operation of applied technology education courses, programs, and facilities on both state and regional levels.

Q. "State Custom Fit Training Program" means a state-funded training program designed to meet the needs of business and industry through classroom, lab, and, if appropriate, on-the-job training. Its purpose is to bring education and business together to provide training and assistance to company employees through applied technology centers and post-secondary institutions in order to stimulate economic development, facilitate the creation of new jobs, coordinate with public schools, and provide businesses with trained workers.

R. "Support services" means a full range of services provided by an ATC/ATCSR designed to assist students in receiving the most benefit from their applied technology instruction.

S. "USOE" means the Utah State Office of Education/Applied Technology Education Services Division.

R277-904-2. Authority and Purpose.

A. This rule is authorized by the Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-203 which places applied technology centers under the control and management of the Board, Section 53A-1-501 which requires a Joint Liaison Committee which coordinates applied technology education issues between the Board and the Utah State Board of Regents, 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 standards and

procedures for operating applied technology centers and service regions.

R277-904-3. Mission.

A. An ATC/ATCSR provides personalized, open-entry/open-exit, competency-based, non-credit applied technology center instruction and support services to high school and adult applied technology center students, displaced workers, and unemployed individuals for employment in skill intensive occupations.

B. An ATC/ATCSR provides occupational upgrade instruction through approved Custom Fit or regular applied technology programs to employed individuals.

C. An ATC/ATCSR offers personalized open-entry/open-exit, competency-based, applied technology instruction on a year-round basis (subject to sufficient enrollment and funding) not tied to pre-set dates such as the traditional school semester or quarter.

D. An ATC/ATCSR shall feature short-term, intensive, task-specific, instruction closely aligned with the needs of business and industry with competencies and length of training determined following consultation with ATC/ATCSR program advisory committees.

R277-904-4. Governance.

A. The Board shall:

(1) develop a statewide system of applied technology including centers (ATCs) with state-supported facilities and service regions (ATCSRs) in regions where facilities are provided by school districts or higher education institutions or both;

(2) adopt policies and procedures for the management of applied technology centers;

(3) appoint ATC boards for the day-to-day operation of applied technology instruction in the ATCs;

(4) determine statewide ATC needs and submit annual recommendations and funding requests to the Legislature;

(5) in consultation with each ATC board, appoint and fix the salary of an executive officer (the ATC superintendent) for each ATC who will serve at the pleasure of the Board and the applied technology center board;

(6) coordinate with the Utah State Board of Regents through the Joint Liaison Committee to plan and operate ATCSRs in regions without ATCs to;

(a) adopt policies and procedures for the management of applied technology centers service regions;

(b) appoint ATCSR boards for the day-to-day operation of applied technology instruction in the service regions;

(c) determine statewide ATCSR needs and submit annual recommendations and funding requests to the Legislature; and

(d) in consultation with each ATCSR board, appoint and fix the salary of an executive officer (the ATCSR director) for each ATCSR who will serve at the pleasure of the Board and the Board of Regents and the applied technology center service region board.

B. The ATC/ATCSR boards shall:

(1) participate with other applied technology education providers within the region (including school districts and higher education institutions) to develop an annual regional master plan for delivering applied technology center programs and services for approval by the Board and the State Board of Regents through the Joint Liaison Committee;

(2) function according to rules and procedures set by the Board;

(3) function according to rules and procedures set by the State Board of Regents as coordinated through the Joint Liaison Committee.

C. ATC/ATCSR Board Composition

(1) ATC boards shall:

(a) establish two-year terms for board members with a reappointment schedule designed to maintain continuity of the ATC board;

(b) recommend potential ATC board members to the Board;

(c) include:

(i) at least one member of the local board of education from each school district located within the ATC region;

(ii) and may include a representative of each higher education institution within the region; and

(iii) representation by at least two individuals who are employers or represent business and industry located within the region. ATC board members who are elected school board members or trustees and also are employers or business and industry representatives may be counted as satisfying this requirement.

(iv) other board members may be appointed by the Board as necessary to ensure the effective and efficient operation of the ATC board.

(d) at least annually, provide recommendations to the Board regarding performance and subsequent salary adjustments for the ATC executive officer according to criteria developed by the Board;

(e) annually elect a chairperson and vice chair from the board's membership.

(2) ATCSR boards shall:

(a) establish two-year terms for board members with a reappointment schedule designed to maintain continuity of the ATCSR board;

(b) recommend potential ATCSR board members to the Board;

(c) include:

(i) the superintendent or his designee of each school district in the region;

(ii) the president or his designee of each higher education institution located in the region; and

(iii) at least two individuals who are employers or represent business and industry located within the region. ATCSR board members who are elected school board members, trustees, or designees and also are employers or business and industry representatives may be counted as satisfying this requirement.

(d) also be recommended to the State Board of Regents through the Joint Liaison Committee;

(e) at least annually, provide recommendations to the Board regarding performance and subsequent salary adjustments for the ATCSR executive officer according to criteria developed by the Board;

(f) also provide recommendations to the Utah State Board

of Regents through the Joint Liaison Committee regarding performance and salary adjustments for the executive officer;

(g) annually elect a chairperson and vice chair from the board's membership.

D. The ATC superintendent or ATCSR director shall:

(1) serve as the executive officer of the ATC/ATCSR board;

(2) administer the day-to-day operation of the applied technology center or service region under the policies and rules of the ATC/ATCSR board and the Board; and

(3) be accountable to the ATC/ATCSR board and the Board in meeting established goals;

(4) shall, in the case of the ATCSR directors, also be accountable to the State Board of Regents through the Joint Liaison Committee.

E. Unless reserved by the Board, the ATC/ATCSR board shall:

(1) be the immediate local authority for each applied technology center or service region;

(2) develop policies for the operation of the ATC/ATCSR;

(3) appoint and fix the salary of all employees, except the executive officer;

(4) adopt and administer an annual budget and fund balances;

(5) submit an annual appropriations request to the Board through the Joint Liaison Committee;

(6) in the case of ATCSRs, also submit an annual appropriations request to the Utah State Board of Regents through the Joint Liaison Committee;

(7) conduct annual program evaluations

(8) appoint program advisory committees and other advisory groups to provide counsel, support, and recommendations for updating and improving the effectiveness of training programs and services;

(9) enact bylaws for self-government, including provisions for board organization and a schedule of regular meetings; and

(10) approve regulations, both regular and emergency, to be issued and executed by the executive officer.

(11) approve or reject center processes and arrangements including:

(a) facility, students, employee organizations, rules and regulation;

(b) instruction, examination, admission, and classification of students;

(c) necessary and proper exercise of authority not specifically denied the ATC/ATCSR by law or by rules of the Board or the Board of Regents.

R277-904-5. Program Advisory Committees.

A. Each ATC/ATCSR shall appoint program advisory committees to provide employer counsel, support, and recommendations for updating and improving the effectiveness of training programs and services.

B. Program advisory committees shall be organized and approved by the ATC/ATCSR board to advise and support each occupational training program at the ATC/ATCSR.

(1) Members of a program advisory committee shall be workers presently employed in the occupation for which the program trains students.

(2) The lead instructor in each training program shall serve as the executive secretary to the program advisory committee.

(3) The program advisory committee shall carry out the program of goals and objectives assigned by the ATC/ATCSR board, provide support, and make recommendations for improving program quality.

R277-904-6. ATC/ATCSR Service Outside of Designated Region.

A. An ATC/ATCSR may freely market and provide services outside its designated region as approved by the Board and coordinated with the State Board of Regents through the Joint Liaison Committee.

B. An ATC/ATCSR may provide services outside its designated region if the services meet the following requirements:

(1) Training has been recommended by the region applied technology master planning committee in which the training is to be provided, and;

(2) The training is not currently or sufficiently offered in the region where it is proposed to be provided, or;

(3) The training is requested and fully funded by the requesting agency or business, or;

(4) The training is provided as a result of a bid consistent with state purchasing procedures.

C. In all cases in which an ATC/ATCSR provides services outside of its designated region, written approval shall be made by the ATC/ATCSR board providing the service and the ATC/ATCSR board of the region where the service will be provided, prior to the commencement of services.

R277-904-7. Applied Technology Instruction and Support Services.

A. Applied technology instruction and support services in each ATC/ATCSR shall incorporate the following components and characteristics:

(1) open entry/open exit enrollment, student assessment, information options, instruction and support services;

(2) hands-on, personalized training based on specific jobs, skills, and tasks associated with an occupation;

(3) curriculum designed to prepare students for employment;

(4) short-term intensive training;

(5) training in meeting employer expectations related to job seeking, job keeping, and appropriate attitudes;

(6) competency-based measurement of student achievement;

(7) instruction based on performance objectives;

(8) traditional letter grades only when necessary due to licensure or other documented and specific requirements; and

(9) no credit issued by ATCs/ATCSRs, however, high school and/or higher education institution credit for ATC/ATCSR earned competencies may be awarded by high schools, colleges, or universities based on written mutual agreement.

B. An ATC/ATCSR Board shall obtain final approval from the Board prior to starting a program that requires permanent space and continuing budget support. The program shall be in the approved regional master plan or shall have

completed the program approval procedure and emphasize the following information:

(1) labor market analysis or client request;

(2) program advisory committee recommendations;

(3) other relevant information.

C. A Program reporting low student enrollment or job placement statistics or both shall be reviewed by the ATC superintendent/ATCSR director and the ATC/ATCSR board to determine if the program is meeting appropriate job demands.

(1) If not, and other criteria used to evaluate the program warrants action, the program shall be discontinued.

(2) Reasonable notice for phasing out a designated program shall be given to avoid hardship to students and staff.

D. An ATC/ATCSR shall provide student assessment services to determine a potential student's employability, abilities, needs, interests, and to identify resources available to the student.

(1) Testing, work samples, career guidance, counseling, or any combination may be utilized.

(2) Assessment services shall include the development of a student education occupation plan.

E. An ATC/ATCSR shall conduct student evaluation according to placement and evaluation procedures set by the Board through the Joint Liaison Committee to determine the employment success and capabilities of students after training.

F. An ATC/ATCSR shall provide job placement services for its secondary and post-secondary students. Job placement services may include:

(1) provision of information on employment opportunities;

(2) locating job openings;

(3) providing interview opportunities with prospective employers;

(4) obtaining the highest feasible level of wage and salary; and

(5) providing employment market data.

G. An ATC/ATCSR shall cooperate with employers to train workers who can fulfill their needs based on available resources.

H. An ATC/ATCSR may operate enterprise activities and avocational programs as long as the activities/programs are consistent with its mission. Fees shall be equal to the full cost of the program and services.

R277-904-8. Evaluation and Accreditation.

A. Each ATC/ATCSR board shall direct the executive officer to evaluate programs, services, facilities, and all phases of the ATC/ATCSR operation and management. Program evaluation data shall include program enrollment, completions, job placements, certifications, wage rates, and program costs factors.

B. The Board, in cooperation with the ATC/ATCSR board, shall evaluate each ATC superintendent/ATCSR director annually.

C. ATCSR boards shall also coordinate with the State Board of Regents through the Joint Liaison Committee for this function.

D. An ATC/ATCSR shall be accredited by the Board in accordance with R277-912, Standards and Procedures for Post-secondary Applied Technology Education Accreditation, as those standards apply to ATC/ATCSRs.

R277-904-9. Certificates.

A. An ATC/ATCSR may issue the following certificates:

(1) Certificates of completion awarded on the completion of all required competencies in a training program. The certificate shall indicate the competencies acquired by the student and be issued in a manner that assists students in obtaining employment or further applied technology education opportunities without having to repeat instruction or pay a second time for areas of demonstrated competency.

(2) Certificates of proficiency or skills certificates awarded to students who complete portions of programs identified as independent areas of benchmarks of skill development. The certificate shall indicate to a potential employer the proficiency levels at which the student can perform specific tasks.

B. If a student desires to receive credit for specific program competencies:

(1) secondary credit may be provided through a school district at the district's discretion;

(2) post-secondary credit shall be provided through a college or university in accordance with the rules and policies adopted by the Board and the State Board of Regents as coordinated through the Joint Liaison Committee.

C. An ATC/ATCSR may not issue secondary diplomas, degrees, or post-secondary credit.

R277-904-10. Staff.

A. Instructional and counseling staff shall hold current certificates consistent with Board rules for the positions to which persons are assigned.

B. Trade and industry, eminence, and alternative certification, as outlined in Board rules, is authorized to meet unique training needs of ATC/ATCSRs.

R277-904-11. Student Eligibility; Fees and Tuition; Student Education Occupation Plan.

A. To be eligible to become a student at an ATC/ATCSR, a person shall comply with ATC/ATCSR rules, including the written code of conduct adopted by each ATC/ATCSR board, be capable of succeeding in an applied technology center training program conducted at the ATC/ATCSR, and be employable at training completion. In addition:

(1) an ATC/ATCSR may not accept a high school student without the approval of the student's school district unless the education and training is in addition to a full high school schedule and is outside the regular school day. High school students enrolling at an ATC/ATCSR shall have an applied technology goal recorded in the student education occupation plan, and be accepted into an ATC/ATCSR program with available space;

(2) an adult student shall have an applied technology goal recorded in the student education occupation plan and shall pay the required tuition and fees.

B. Persons who meet the eligibility requirements, but who are not Utah residents, may be admitted to ATC/ATCSR programs on a space available basis in compliance with R277-902-3.

C. Tuition at ATC/ATCSRs shall be waived for students

who are enrolled in Utah high schools or who are of high school age and are working toward a high school diploma, unless classes are taken in addition to a student's full high school schedule.

R277-904-12. Fiscal Procedures.

A. An ATC/ATCSR board shall keep fiscal, program, and accounting records as required by the Board and as needed by the ATC/ATCSR, and shall submit reports required by the Board. The ATC/ATCSRs shall account and report following the model used for Generally Accepted Accounting Principles (GAAP) as set forth by the Governmental Accounting Standards Board (GASB) and by the National Association of College and University Business Officers (NACUBO).

B. An ATC/ATCSR shall prepare a comprehensive annual financial report which is issued separately from the financial report of any other entity. An ATC/ATCSR board and the State Auditor's Office shall jointly select an independent auditor to conduct an annual audit of the ATC/ATCSR's comprehensive annual financial report. Three financial statements are required for ATC/ATCSRs. These are the:

(1) balance sheet;

(2) statement of changes in fund balances; and

(3) statement of current funds, revenues, expenditures, and other changes. The independent auditor shall provide an auditors' report and any other reports or documentation required by Government Auditing Standards and by the State Auditor's Office, to the Board within three months after the close of the fiscal year.

C. An ATCSR that is provided financial accounting services through a fiscal agent shall comply with the same annual audit requirements of Subsection R277-904-12B through the independent auditor contracted by the fiscal agent and approved by the State Auditor's Office with the exceptions that:

(1) the ATCSR may prepare separately issued basic financial statements, including notes to the financial statements, rather than a comprehensive annual financial report; and

(2) the auditor may perform a financial review of the separately issued financial statements, rather than a full audit, provided that the ATCSR is included in the audit of the fiscal agent.

D. ATC/ATCSRs shall account for and report their financial activities to the Board as of June 30 annually as part of the audited comprehensive annual financial report in accordance with GAAP as set forth in GASB pronouncements and in the NACUBO Financial Accounting and Report Manual for Higher Education which are available from the USOE Finance and Statistics Section.

E. Fund Accounting Standards:

(1) An ATC/ATCSR shall establish accounting fund designations as necessary in order to perform financial accounting and reporting in conformity with GAAP as set forth by GASB and NACUBO.

(2) ATC/ATCSRs shall account for current operations within the current accounting funds, comprised of the general operating, designated, auxiliary enterprises, and restricted accounting funds.

(a) The general operating fund shall be used to account for all financial resources and transactions not accounted for in another fund. An ATC/ATCSR APPROPRIATED BUDGET shall be its entire general operating fund budget.

(b) The designated fund shall be used to account for all financial resources and transactions which have internal designations imposed by the local ATC/ATCSR board for a specific operating purpose. Internal designations do not create restricted funds, because removal of the designation remains at the discretion of the ATC/ATCSR board. Included in the designated fund are sales and services of educational activities.

(c) The auxiliary enterprises fund shall be used to account for all financial resources and transactions from activities which predominantly provide goods or services to students, faculty, or staff and that charge a fee directly related to, although not necessarily equal to, the cost of the goods or services. Auxiliary enterprise fund activities are limited to those activities for which sales and services, rather than training and instruction, are the primary purpose. Included in the auxiliary enterprises fund are the following activities unless such activities exist primarily for training or instruction: bookstores, student housing, day care, food services, and exercise facilities.

(d) The restricted fund shall be used to account for all financial resources and transactions which have restrictions placed on their use by external agencies or donors. Included in the restricted fund are the following activities: federal and state student financial assistance programs, federal contracts (whether direct or through state or local sources), state contracts (including State Custom Fit Training), local agency contracts, private contracts (including Private Custom Fit Contracts), and independent operations.

(3) Each ATC/ATCSR shall maintain adequate fund balances.

(a) The Board directs that the general operating fund balance should be at least three to five percent of the annual general operating fund revenues.

(b) Unrestricted Current Accounting Funds, Fund Balance -- At each ATC/ATCSR, fund balances not externally restricted and not internally reserved for inventories, investment in general fixed assets, or purchase order encumbrances, in all current and plant accounting funds, shall not exceed, combined and at year end, seven and one-half (7-1/2) percent of the total combined unrestricted revenues in those accounting funds for the year then ended. The ATC/ATCSR board may recommend an amount greater than that to the Board for approval up to ten (10) percent of the total combined unrestricted revenues. Exceptional revenue items received late in the fiscal year due to circumstances not in the control of the ATC/ATCSR or due to mandate from a governing authority at Board level or higher to spend such revenue item(s) in a subsequent time period, such as a supplemental appropriation for expenditure in a subsequent fiscal year, shall be excluded from fund balances when calculating fund balance percentages for these purposes.

(4) An ATC/ATCSR board may authorize transfers of financial resources among accounting funds. The ATC/ATCSR board may elect to set aside financial resources for specific future operating purposes by transferring financial resources to other accounting funds, such as to designated funds for use in some specific future operating purpose, to plant funds for expansion or rehabilitation or for debt retirement. The ATC/ATCSR board may also elect to return any balances of

designated or plant funds to the unrestricted general operating fund.

(5) An ATC/ATCSR shall not incur significant debt without Board permission.

(6) An ATC/ATCSR shall report "Education and General" expenditures in the following functional categories: instruction, academic support, student services, institutional support, operation and maintenance of plant, and scholarships.

(a) The instruction category includes expenditures for all activities that are part of an ATC/ATCSR's instruction or training programs. This category excludes expenditures for instructional personnel when the primary assignment is administration and no direct classroom or lab instruction is included in the assignment.

(b) The academic support category includes expenditures incurred to provide support services for the ATC/ATCSR's instruction or training programs. It includes instructional administration and separately budgeted support for course and curriculum development. Expenditures associated with the office of the chief training officer or manager are not included in this category, but shall be classified as institutional support.

(c) The student services category includes expenditures incurred for the offices of admissions, student records, and other activities with the primary purpose of contributing to students' emotional and physical well-being. It includes counseling, placement, and student financial assistance administration.

(d) The institutional support category includes expenditures for executive-level activities concerned with the management of the ATC/ATCSR. This category includes expenditures for the local ATC/ATCSR board, the office of the ATC superintendent or the ATCSR director, the office of the chief training officer or manager, the office of the ATC/ATCSR business administrator, fiscal operations, employee personnel and records, and public relations.

(e) The operations and maintenance of plant category includes all expenditures of current operating funds for the operation and maintenance of the physical plant.

(f) The scholarships category includes expenditures for scholarships, including those in the form of grants, stipends, and student tuition waivers.

(7) Expenditures from all fund accounts shall be made only by approval of the ATC/ATCSR board and shall be reported to the Board as prescribed by the Board.

(8) Each ATC/ATCSR board shall establish and maintain a capital equipment inventory system consistent with capital equipment inventory standards required by the Board.

(9) An ATC/ATCSR is considered a state agency for insurance purposes. As such, the ATC/ATCSR board shall ensure that the ATC/ATCSR complies with the policies and rules of the State Risk Management Office and is properly covered at all times by appropriate types and levels of insurance through that office.

(10) When computing full time equivalent personnel, ATC/ATCSR boards shall use 2,080 hours per year to equal one full time equivalent for all ATC/ATCSR personnel with paid holidays and vacation or 1,840 hours for personnel without paid vacation or holidays.

(11) Supplemental budget reports for unappropriated programs and for the plant accounting funds shall be submitted as part of the appropriation request to provide analysts a comprehensive ATC/ATCSR budget picture. Appropriation requests and supplemental information shall be submitted to the Board and appropriating bodies in conformance with designated Board procedures and timelines.

R277-904-13. Capital Facilities.

A. An ATC board shall follow procedures governing capital facilities adopted by the Board.

B. An ATC board shall approve all capital facility requests, including land acquisition, and shall submit the requests to the Board in accordance with Board procedures.

C. Any use of ATC facilities that restricts, limits, or interferes with the utilization of those facilities for applied technology education purposes is prohibited.

KEY: adult education, applied technology education*

March 3, 2000	**Art X Sec 3**
Notice of Continuation October 20, 1997	**53A-15-203**
	53A-1-501
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-115. General Conformity.
R307-115-1. Determining Conformity.

The provisions of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, published at 58 FR 63214 on November 30, 1993, and effective on January 31, 1994, are hereby incorporated by reference into these rules.

KEY: environmental protection, air pollution, general conformity*
September 15, 1998 19-2-104

R307. Environmental Quality, Air Quality.

R307-121. General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment to Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.

R307-121-1. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Certified by the Board" is defined in Utah Code 59-7-605(1)(b) and 59-10-127(1)(b).

"Clean Fuel" means:

(1) propane, natural gas, or electricity;

(2) other fuel the Air Quality Board determines annually on or before July 1, to be at least as effective as fuels under (1) in reducing air pollution; or

(3) fuel that meets the clean fuel vehicle standards specified in Part C of Title II of the federal Clean Air Act.

"Conversion System" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added during the process of modifying a motor vehicle or a special fuel mobile equipment to operate on a clean fuel.

"Special Fuel Mobile Equipment" is defined in Utah Code 59-7-605(1)(d) and 59-10-127(1)(d).

R307-121-2. Amount of Credit.

As specified in Sections 59-7-605 and 59-10-127, there is a credit against tax otherwise due in an amount equal to:

(1) 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that are fueled by a clean fuel;

(2) 20%, up to a maximum of $400, of the cost of equipment for conversion, if certified by the Board, of a motor vehicle registered in Utah to be fueled by a clean fuel; and

(3) 20%, up to a maximum of $500, of the cost of equipment for conversion, if certified by the Board, of a special fuel mobile equipment engine to be fueled by a clean fuel or a fuel substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

R307-121-3. Anti-Tampering Policy.

No person may convert a motor vehicle to use a clean fuel in a manner that violates Section 203(a) of the Act or the "Interim Tampering Enforcement Policy" of the Environmental Protection Agency, June 15, 1974.

R307-121-4. Proof of Purchase for New Vehicle.

Proof of purchase of an item for which a credit specified in R307-121-2(1) is allowed shall be made by submitting to the executive secretary:

(1) a copy of the Manufacturer's Statement of Origin;

(2) an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

(3)(a) a copy of the Manufacturer's Suggested Retail Price document that includes a clean fuel option on the equipment list for that vehicle or

(b) in the case of vehicles certified as meeting the Clean Fleet Vehicle standards specified in Part C of the federal Clean Air Act, the owner must make the vehicle available for verification by a representative of the executive secretary of an under-hood decal on the vehicle for which the credit is requested stating "This vehicle (or engine, as applicable) conforms to California regulations applicable to (model-year) new (TLEV, LEV, ULEV, or ZEV) (specify motorcycles, passenger cars, light-duty trucks, medium-duty diesel engines, as applicable)."

R307-121-5. Proof of Purchase for Converted Vehicle.

(1) Proof of purchase of an item for which a credit specified in R307-121-2(2) or (3) is allowed shall be made by submitting to the executive secretary a copy of the purchase order, customer invoice, or receipt.

(2) The proof of purchase specified in R307-121-5(1) must be completed and signed by the person that converted the vehicle or the special fuel mobile equipment, and must include the following information:

(a) owner's name;

(b) owner's social security number or taxpayer identification number;

(c) vehicle VIN or identification number of the special fuel mobile equipment;

(d) fuel type before conversion;

(e) fuel type after conversion;

(f) conversion system manufacturer;

(g) conversion system model number;

(h) date of the conversion;

(i) name, address, and phone number of the person that converted the vehicle or the special fuel mobile equipment;

(j) documentation of compliance with all existing applicable technician certification requirements, as specified in 53-7-301 through 316, R710-6, and R714-400-7.P, for the person that performed the installation of the conversion system, by providing the technician's current valid certification number;

(k) documentation that the conversion system installed has been certified by the Board, by providing the current valid certification number issued by the executive secretary in accordance with R307-121-6; and

(l) for vehicle conversions, copies of the vehicle inspection reports (VIR) before and after the conversion, indicating that the vehicle passed the current applicable inspection and maintenance (I/M) emission test in the county where the vehicle is registered. The owner is exempt from the VIR submission requirements, only if a vehicle is registered and is converted in a county that does not implement any inspection and maintenance program. If the vehicle is registered in a non-I/M county and is converted in an I/M county, VIR submission is required.

R307-121-6. Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.

(1) For vehicles.

(a) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel, vehicle class, and engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion

system has met all applicable requirements:

(i) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;

(ii) Federal Test Procedure (FTP) mass emissions test data which:

(A) is collected in high altitude conditions as defined by the Environmental Protection Agency (EPA) using EPA approved equipment, test procedures and practices, and meeting EPA emissions certification standards, as defined in 40 CFR Part 86;

(B) shows that tests conducted before and after installation of the conversion system demonstrate a reduction in total emissions and that there is no increase in emissions for each regulated pollutant compared to emission levels when operated on the original fuel prior to the conversion;

(C) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

(iii) system engineering specifications.

(b) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system, or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(c) Special provisions.

(i) After conversion, dual-fuel or flexible-fuel vehicles shall be required to undergo at least one Federal Test Procedure on conventional fuel and must demonstrate that the EPA emissions certification standards in 40 CFR Part 86 for that vehicle type and model year on the conventional fuel are being met.

(ii) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in (1)(a)(ii)(A) above, if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

(iii) Acceptability of Canadian data will be determined on a case-by-case basis after demonstrating to the satisfaction of the executive secretary that the test is equivalent to the Federal Test Procedure.

(iv) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

(2) For special fuel mobile equipment.

(a) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel and mobile equipment engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(i) description of each conversion system, fuel used, and mobile equipment engine type;

(ii) emissions test data showing that the conversion system results in an emission reduction of total emissions and that there is no increase in emissions for each regulated pollutant in comparison with emission levels when operated on the original fuel prior to the conversion; and

(iii) system engineering specifications.

(b) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(c) The executive secretary shall evaluate the certification of conversion system for special fuel mobile equipment on a case-by-case basis as new technologies are improved.

(3) Certification by other states may be accepted by the executive secretary if it meets the requirements specified in (1) and (2) above.

R307-121-7. Revocation of Certification.

The executive secretary will revoke the certification of a conversion system if an investigation finds that a certified conversion system exceeds the level of emissions for which it was certified, taking into account deterioration because of age or other reasonable concern.

R307-121-8. Duty to Acknowledge Proof of Purchase.

The executive secretary will acknowledge receipt of proofs specified in R307-121 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.

KEY: air pollution, tax exemptions, motor vehicles

September 15, 1998	**19-2-104**
Notice of Continuation June 2, 1997	**59-7-605**
	59-10-127

R307. Environmental Quality, Air Quality.
R307-122. General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.
R307-122-1. Definitions.

Definitions. The following additional definitions apply to R307-122:

"Fireplaces and wood stoves" using clean burning fuels are:

(1) continual-feed wood pellet stoves

(2) high-mass wood stoves

(3) natural gas or propane free-standing fireplaces or inserts, but not including fireplace log systems, or

(4) any wood burning stove, fireplace, or fireplace insert that is certified by the Environmental Protection Agency in accordance with test procedures prescribed in 40 CFR Section 60.534.

R307-122-2. Amount of Credit.

As specified in Subsection 59-7-606 and Section 59-10-128, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of:

(1) the purchase price or

(2) both the purchase price and installation cost of each approved fireplace or wood stove.

R307-122-3. Proof of Purchase.

Proof of purchase of an item for which a credit specified in R307-122-2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

(1) a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and

(2) a completed copy of the "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form identifying the:

(a) owner's name and address;

(b) owner's social security number or taxpayer identification number;

(c) dealer's name and address;

(d) fireplace make and model;

(e) fireplace serial number;

(f) purchase price;

(g) installer's name and company name; and

(h) installation cost.

R307-122-4. Duty to Acknowledge Proof of Purchase.

An authorized representative of the executive secretary will acknowledge receipt of proofs specified in R307-122-3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

KEY: air pollution, tax exemptions, stove*, fireplace*

September 15, 1998	**19-2-104**
Notice of Continuation June 2, 1997	**59-10-128**
	59-7-606

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6) and Section 63-38-3.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

R313-12-3. Definitions.

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

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A_2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

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

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

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

"Byproduct material" means:

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

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

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

observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

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

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

"CFR" means Code of Federal Regulations.

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

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

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

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

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

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

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

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

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

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

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

terminated.

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

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

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

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

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

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

"Individual" means a human being.

"Individual monitoring" means the assessment of:

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

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

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

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

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

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

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

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

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

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

"Limits". See "Dose limits".

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

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

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

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

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

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

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

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

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

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

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

"Person" means an individual, corporation, partnership,

firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Radiobioassay". See "Bioassay".

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

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

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

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

"Research and development" means:

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

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

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

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

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

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

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

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

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

factor. One Sv equals 100 rem.

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

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

"Source material" means:

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

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

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

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

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

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

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

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

"Special nuclear material" means:

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

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

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

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

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

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

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

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

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

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

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

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

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

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

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

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

"Week" means seven consecutive days starting on Sunday.

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

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

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

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

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58 x 10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

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

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

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5 x 10^{-8}	2	980 x 10^6	980 x 10^8
	1 x 10^{-7}	2	980 x 10^6	980 x 10^8
	1 x 10^{-6}	2	810 x 10^6	810 x 10^8
	1 x 10^{-5}	2	810 x 10^6	810 x 10^8
	1 x 10^{-4}	2	840 x 10^6	840 x 10^8
	1 x 10^{-3}	2	980 x 10^6	980 x 10^8
	1 x 10^{-2}	2.5	1010 x 10^6	1010 x 10^8
	1 x 10^{-1}	7.5	170 x 10^6	170 x 10^8
	5 x 10^{-1}	11	39 x 10^6	39 x 10^8
	1	11	27 x 10^6	27 x 10^8
	2.5	9	29 x 10^6	29 x 10^8
	5	8	23 x 10^6	23 x 10^8
	7	7	24 x 10^6	24 x 10^8
	10	6.5	24 x 10^6	24 x 10^8
	14	7.5	17 x 10^6	17 x 10^8
	20	8	16 x 10^6	16 x 10^8
	40	7	14 x 10^6	14 x 10^8
	60	5.5	16 x 10^6	16 x 10^8
	1 x 10^2	4	20 x 10^6	20 x 10^8
	2 x 10^2	3.5	19 x 10^6	19 x 10^8
	3 x 10^2	3.5	16 x 10^6	16 x 10^8
	4 x 10^2	3.5	14 x 10^6	14 x 10^8

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7 x 10^{10} disintegrations or transformations per second, which equals 3.7 x 10^{10} becquerel, which equals 2.22 x 10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120

days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

(4) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, upon reasonable notice, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 168 North 1950 West, Salt Lake City, Utah 84114-4850.

KEY: definitions, units, inspections, exemptions

March 10, 2000	**19-3-104**
Notice of Continuation March 26, 1997	**19-3-108**

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Sections 19-3-104(3) and 19-3-104(6).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Section R313-32-75, or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, 1997 ed. Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 49 CFR 173.421 through 424, 1997 ed.

"Lung class", refer to "Class".

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence

are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, w_T = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(i) An eye dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure determined as follows:

(a) The deep dose equivalent, eye dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the

deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20-2402, 1997 ed., which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant.

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsection R313-15-205(1), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(b) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1), on form DRC-05, or other clear and legible record, of all the information required on that form.

(a) The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(b) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(5) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose to an embryo/fetus shall be taken as the sum of:

(a) The dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(b) The dose that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus, in accordance with Subsection R313-15-201(3); or

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the embryo fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 4.5 mSv (0.45 rem) the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) Except as provided in Subsection R313-15-301(1)(c), the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contribution from background radiation, from any medical administration the individual has received, from exposure to individuals

administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Section R313-32-75, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Board's jurisdiction under the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Executive Secretary;

(b) Have previously submitted and received Executive Secretary approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Executive Secretary.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Executive Secretary will require additional cleanup only if, based on new information, the Executive Secretary determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination

under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control as described in Subsection R313-22-35(6)(a);

(b) Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);

(c) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(d) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Executive Secretary may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection

R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the Executive Secretary after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Executive Secretary deems such notice to be in the public interest, the Executive Secretary shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) Federal, state and local governments for cases where the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) Radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards that could be present.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors and declared pregnant women likely to receive, in one year from sources external to the body, a dose in excess of ten percent of any of the applicable limits in Sections R313-15-207 or R313-15-208; and

(c) Individuals entering a high or very high radiation area; and

(d) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical

fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for eye dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(b) Minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.50 mSv (0.05 rem).

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure

that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to

physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment or ventilation, to control the concentrations of radioactive material in air.

R313-15-702. Use of Other Controls.

When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(1) Control of access; or

(2) Limitation of exposure times; or

(3) Use of respiratory protection equipment; or

(4) Other controls.

R313-15-703. Use of Individual Respiratory Protection Equipment.

(1) If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to Section R313-15-702:

(a) Except as provided in Subsection R313-15-703(1)(b), the licensee or registrant shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(b) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, has not had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(c) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(i) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and

(ii) Surveys and bioassays, as appropriate, to evaluate actual intakes; and

(iii) Testing of respirators for operability immediately prior to each use; and

(iv) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) Determination by a physician prior to initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.

(d) The licensee or registrant shall issue a written policy statement on respirator usage covering:

(i) The use of process or other engineering controls, instead of respirators; and

(ii) The routine, nonroutine, and emergency use of respirators; and

(iii) The length of periods of respirator use and relief from respirator use.

(e) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(f) The licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to Section R313-15-702, provided that the following conditions, in addition to those in Subsection R313-15-703(1), are satisfied:

(a) The licensee or registrant selects respiratory protection equipment that provides a protection factor, specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Appendix B, Table I, Column 3 of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. However, if the

selection of respiratory protection equipment with a protection factor greater than the multiple defined in the preceding sentence is inconsistent with the goal specified in Section R313-15-702 of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(b) The licensee or registrant shall obtain authorization from the Executive Secretary before assigning respiratory protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

(i) Describes the situation for which a need exists for higher protection factors, and

(ii) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(4) The licensee or registrant shall notify the Executive Secretary in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either Subsections R313-15-703(1) or R313-15-703(2).

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, 1997 ed., which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901a, 1997 ed., which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Section R313-32-75.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in

Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) Requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed.

(a) The requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed., which are incorporated into these rules by reference, are designed to:

(i) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix F or G in 10 CFR 20.1001 to 20.2402, 1997 ed., who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(ii) establish a manifest tracking system; and

(iii) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(b) Beginning March 1, 1998, all affected licensees must use Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference. Prior to March 1, 1998, a low-level waste disposal facility operator or its regulatory authority may require the shipper to use Appendix F or Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed. Licensees using Appendix F shall comply with Subsection R313-15-1006(2)(a). Licensees using Appendix G shall comply with Subsection R313-15-1006(2)(b).

(2) Shipment of Radioactive Waste.

(a) Each shipment of radioactive waste designated for disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in Section I of Appendix F of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(b) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1008(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1008(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE I

Concentration

Radionuclide	curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1008(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1) Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1008(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site

through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1008(2)(a)(iii) and R313-15-1008(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1008(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(1)(c)(i) and R313-15-703(1)(c)(ii); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsection R313-15-204(3); and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) An eye dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) An eye dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile to the Executive Secretary.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance

with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide a copy of the report submitted to the Executive Secretary to the individual. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem)above background and that the annual total effective dose equivalent from any specific environmental source during decommissioning activities should not exceed 0.1 mSv (0.01 rem)above background.

R313-15-1401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

KEY: radioactive material, contamination, waste disposal, safety

March 10, 2000 **19-3-104**

Notice of Continuation April 30, 1998 **19-3-108**

R313. Environmental Quality, Radiation Control.

R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.

R313-16-200. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Section 19-3-104(3).

R313-16-215. Definitions.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

R313-16-220. Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

R313-16-225. Responsibility for Radiation Safety Program.

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Executive Secretary's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Executive Secretary may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the Department.

(2) Registration renewal shall be required annually. The registration interval is July 1 through June 30 of the following year. The annual registration anniversary date shall be July 1. Renewal application will be considered late and late fees may be assessed if not received by the last day of August.

(3) Registration for the facility is achieved when the Executive Secretary receives the following:

(a) a current and complete application form DRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Executive Secretary through receipts for the remittance of the registration fee.

R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

(2) Registrants who possess and use a particle accelerator that has been registered with the Department prior to January 1, 1999 shall submit a registration application that contains the information in R313-16-231(1)(a) through (e). The application shall be submitted by July 1, 1999.

R313-16-233. Notification of Intent to Provide Servicing and Services.

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Executive Secretary of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-233, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components;

(b) calibration of radiation machines or radiation measurement instruments or devices; and

(c) consultations or surveys for radiation protection or health physics (See Section R313-16-400).

(4) Individuals shall not perform the services listed in Subsection R313-16-233(3) unless they are specifically stated for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-16-233(2) has been received by the Executive Secretary.

R313-16-235. Designation of Registrant.

The owner or lessee of a radiation machine is the registrant. The registrant shall be responsible for penalties imposed under the Executive Secretary's escalated enforcement authority, see Rule R313-14.

R313-16-240. Reciprocal Recognition of Registration or License.

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

R313-16-250. Report of Changes.

The registrant shall send written notification within 14 working days to the Executive Secretary when:

(1) there are changes in location or ownership of a radiation machine;

(2) radiation machines are retired from service;

(3) radiation machines are put in storage or returned to service from storage; or

(4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

R313-16-260. Approval Not Implied.

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Executive Secretary.

R313-16-270. Transferor, Assembler, or Installer Obligation.

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Executive Secretary within 14 working days of the following:

(a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;

(b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and

(c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Executive Secretary within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

(a) the full name and address of the assembler and the date of assembly or installation;

(b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;

(c) an affirmation that the applicable rules have been met;

(d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;" and

(e) a list of the components which were assembled or installed into the radiation machine system or subsystem, identifying the components by type, manufacturer, model number, and serial number.

R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

R313-16-280. Out-of-State Radiation Machines.

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Executive Secretary at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Executive Secretary, obtain permission to proceed sooner.

(2) In addition, the out-of-state person shall:

(a) comply with the applicable portions of these rules;

(b) supply the Executive Secretary other information as the Executive Secretary requests.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules, to assist in improving radiographic imaging and to assist in lowering radiation exposure to as low as reasonably achievable levels, see R313-15-101. During an inspection of a facility, representatives of the Executive Secretary may, as a part of the inspection, accept work, performed by a person who meets the qualifications in R313-16-400, that demonstrates compliance with these rules.

(2) Inspections may, at the Executive Secretary's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Executive Secretary.

R313-16-400. Qualifications an Individual May Have to Perform Radiation Safety Inspections for a Registrant.

The following are representative, but not exclusive, lists of the qualifications of those individuals who may have sufficient experience or training to perform radiation safety inspections for a registrant. These individuals shall submit a statement of their training and experience to the Executive Secretary.

(1) Radiation therapy:

(a) Certified by the American Board of Radiology (A.B.R.) in radiation therapy;

(b) Certified by the American Board of Medical Physics in radiation therapy;

(c) Ph.D. plus two years of clinical therapy experience;

(d) M.S. plus three years of clinical therapy experience; or

(e) B.S. plus five years of clinical therapy experience.

(2) Radiation therapy safety and leakage survey only:

(a) Certified by the American Board of Health Physics (A.B.H.P.); or

(b) Eligible for admission to A.B.H.P. certification test.

(3) Diagnostic x-ray:

(a) Certified by the A.B.R. in diagnostic radiology (physics);

(b) Certified by the American Board of Medical Physics in radiation therapy;

(c) A.B.H.P. comprehensive certification;

(d) Ph.D. plus one year clinical experience or two years general experience;

(e) M.S. plus one year clinical experience or two years general experience;

(f) B.S. plus two years clinical experience or four years general experience;

(g) Eligible for admission to A.B.R. certification test, M.S. plus two years experience; or

(h) Eligible for admission to A.B.H.P. certification test:

(i) B.S. plus five years health physics, preferably in diagnostic x-ray surveys experience;

(ii) M.S. in physical sciences plus four years health physics, preferably in diagnostic x-ray surveys experience;

(iii) M.S. in health physics or medical physics plus 3-1/2 years health physics, preferably in diagnostic x-ray surveys experience;

(iv) Ph.D. in physical sciences plus 3-1/2 years health physics, preferably in diagnostic x-ray surveys experience; or

(v) Ph.D. in health physics or medical physics plus three years health physics, preferably in diagnostic x-ray surveys experience.

KEY: x-ray, inspection
March 10, 2000 **19-3-104**
Notice of Continuation March 26, 1997

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Executive Secretary.

(2) The Executive Secretary may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Executive Secretary to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Executive Secretary, provided the references are clear and specific.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall identify the source or device by manufacturer and model number as registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210, 2000 ed. or the equivalent regulations of an Agreement State.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system

for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Executive Secretary; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Executive Secretary immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 1992 ed.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Executive Secretary.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Executive Secretary. The licensee shall provide any comments received within the 60 days to the Executive Secretary with the emergency plan.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Executive Secretary determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Executive Secretary determines will significantly affect the quality of the environment, the Executive Secretary, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Executive Secretary shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. As used in this paragraph the term "commencement of construction" means clearing of land, excavation, or other substantial action

that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Executive Secretary will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Executive Secretary deems appropriate or necessary.

(2) The Executive Secretary may incorporate in licenses at the time of issuance, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as he deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2000 ed., which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2000 ed., which is incorporated by reference.

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4) shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Executive Secretary before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Executive Secretary, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after January 1, 1995, which is of a type described in Subsections R313-22-35(1) or (2) shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(1) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(2) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with Section R313-22-37 shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2). This assurance shall be submitted before January 1, 1997.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2000 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$750,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2000 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$150,000
Greater than 10^{10} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2000 ed., which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1), divided by 10^{10} is greater than one:	$75,000

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method

of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Executive Secretary, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Executive Secretary within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Executive Secretary has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Executive Secretary considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and

previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Executive Secretary within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Executive Secretary of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Executive Secretary, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Executive Secretary of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that

procedure, the licensee shall inform the Executive Secretary within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Executive Secretary of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Executive Secretary, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Executive Secretary of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license or until another financial assurance method acceptable to the Executive Secretary has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Executive Secretary and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Executive Secretary within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Executive Secretary a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Board, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Executive Secretary makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Executive Secretary expires at the end of the day on the date of the Executive Secretary's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Executive Secretary.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Executive Secretary notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Executive Secretary in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as

decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Executive Secretary.

(6) The Executive Secretary may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Executive Secretary determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Executive Secretary has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Executive Secretary and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Executive Secretary may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Executive Secretary determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Executive Secretary if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Executive Secretary may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Executive Secretary determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Executive Secretary may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed--for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Executive

Secretary determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Executive Secretary that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Executive Secretary and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Executive Secretary Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Executive Secretary will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and

management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Executive Secretary, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Executive Secretary under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material into products in exempt concentrations.

(a) In addition to the requirements set forth in Section R313-22-33, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under Subsection R313-19-13(2)(a) will be issued if:

(i) the applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(ii) the applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in Section R313-19-70, that reconcentration of the radioactive material in concentrations exceeding those in Section R313-19-70 is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to a human being.

(b) Persons licensed under Subsection R313-22-75(1) shall file an annual report with the Executive Secretary which shall identify the type and quantity of products or materials into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product and material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into the product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(1) during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty days thereafter.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment,

devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) An application for a specific license to distribute naturally occurring and accelerator-produced radioactive material (NARM) to persons exempted from these rules pursuant to Subsection R313-19-13(2)(b) will be approved if:

(i) the radioactive material is not contained in a food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(ii) the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(iii) the applicant submits copies of prototype labels and brochures and the Executive Secretary approves the labels and brochures;

(b) The license issued under Subsection R313-22-75(2)(a) is subject to the following conditions:

(i) No more than ten exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(ii) Exempt quantities shall be separated and individually packaged. No more than ten packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection R313-19-13(2)(b). The outer package shall not allow the dose rate at the external surface of the package to exceed 0.5 millirem (5.0 uSv) per hour.

(iii) The immediate container of a quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

(A) identifies the radionuclide and the quantity of radioactivity; and

(B) bears the words "Radioactive Material."

(iv) In addition to the labeling information required by Subsection R313-22-75(2)(b)(iii), the label affixed to the immediate container, or an accompanying brochure, shall:

(A) state that the contents are exempt from Licensing State requirements;

(B) bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined;" and

(C) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(c) Persons licensed under Subsection R313-22-75(2) shall maintain records identifying, by name and address, persons to whom radioactive material is transferred for use under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of radionuclides transferred under the specific license shall be filed with the Executive Secretary. Reports shall cover the year ending June 30, and shall be filed within thirty days thereafter. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(2) during the reporting period, the report shall so indicate.

(3) Licensing the incorporation of naturally occurring and accelerator-produced radioactive material (NARM) into gas and aerosol detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under Subsection R313-19-13(2)(c)(iii) will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie (3.7 kBq).

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Executive Secretary, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents

such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Executive Secretary will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d) Persons licensed under Subsection R313-22-75(4) to distribute devices to generally licensed persons shall:

(i) furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom the person directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Subsection R313-21-22(4);

(ii) furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's, Agreement State's, or Licensing State's regulation equivalent to Subsection R313-21-22(4), or alternatively, furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission, the Agreement State or the Licensing State. If a copy of the general license in Subsection R313-21-22(4) is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State under requirements substantially the same as those in Subsection R313-21-22(4);

(iii) report to the Executive Secretary all transfers of such devices to persons for use under the general license in Subsection R313-21-22(4). The reports shall identify the general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within thirty days thereafter;

(iv) furnish reports to other agencies.

(A) Report to the U.S. Nuclear Regulatory Commission all

transfers of those devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 31.5.

(B) Report to the responsible State agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(4) for use under a general license in that State's regulations equivalent to Subsection R313-21-22(4).

(C) The reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the responsible agency and general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within thirty days after the end of each calendar quarter in which a device is transferred to the generally licensed person.

(D) If transfers have not been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission.

(E) If transfers have not been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

(v) keep records showing the name, address and the point of contact for each general licensee to whom the person directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in Subsection R313-21-22(4), or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of intermediate persons, and compliance with the report requirements of Subsection R313-22-75(4).

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 and 32.101, or their equivalent.

(6) Special requirements for license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, 32.102 and 10 CFR 70.39, or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding ten microcuries (370.0 kBq) each;

(ii) iodine-131 in units not exceeding ten microcuries (370.0 kBq) each;

(iii) carbon-14 in units not exceeding ten microcuries (370.0 kBq) each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 MBq) each;

(v) iron-59 in units not exceeding 20 microcuries (740.0 kBq) each;

(vi) cobalt-57 in units not exceeding ten microcuries (370.0 kBq) each;

(vii) selenium-75 in units not exceeding ten microcuries (370.0 kBq) each; or

(viii) mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed ten microcuries (370.0 kBq) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 microcuries (1.85 MBq) of hydrogen-3 (tritium); 20 microcuries (740.0 kBq) of iron-59; or Mock Iodine-125 in units not exceeding 0.05 microcuries (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 32.103 are met.

(9) Manufacture and distribution of radiopharmaceuticals containing radioactive material for medical use under group licenses.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Section R313-32-2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iii), or an individual under the supervision of an authorized nuclear pharmacist as specified in Section R313-32-25.

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Section R313-32-2;

(B) this individual meets the requirements specified in Subsection R313-32-980(2) and Section R313-32-972 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iii).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Section R313-32-2, as an authorized nuclear pharmacist if the individual is identified as of January 1, 1997 as an "authorized user" on a nuclear pharmacy license issued by the Executive Secretary under Subsection R313-22-75(9).

(v) Shall provide to the Executive Secretary a copy of each individual's certification by the Board of Pharmaceutical Specialties, the U.S. Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and (B), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the

instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Section R313-32-18 for use as a calibration or reference source or for the uses listed in Sections R313-32-400 and R313-32-500 will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Executive Secretary for distribution to persons licensed pursuant to Sections R313-32-18, R313-32-400, and R313-32-500 or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(e) in determining the acceptable interval for test of leakage of radioactive material, the Executive Secretary shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Executive Secretary will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Executive Secretary may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and

the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the U.S. Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Executive Secretary all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 40.25;

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01	50,000
	Non CO	
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000

Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1

Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210, 2000 ed. or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive material

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R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-1. Purpose and Scope.

The rules in this chapter establish procedures, criteria, and terms and conditions upon which the Department issues licenses for the land disposal of wastes received from other persons. The requirements of R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in R313-25-19 and R313-25-20 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under R313-25.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes as defined in Section 19-3-102 that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as it does in the Low-Level Radioactive Waste Policy Act, Pub.L. 96-573, 94 Stat. 3347; thus, the term denotes radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, waste does not mean byproduct material as defined in 42 U.S.C. 2011(e)(2) of the Atomic Energy Act, uranium or thorium tailings and waste.

R313-25-3. Siting Criteria and Pre-licensing Plan Approval for Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Executive Secretary before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3 and Section 19-3-105.

(2) The siting criteria and plan approval requirements in R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(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 wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles of existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 100 feet of uranium mill tailings;

(xii) areas 1000 feet of archeological sites to which adverse impacts cannot reasonably be mitigated;

(xiii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiv) drinking water source protection areas designated by the State Drinking Water Committee;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas, such as areas of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Incinerators associated with land disposal facilities may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l. Incinerators not associated with ground disposal facilities shall not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l.

(5) Facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for incinerators and of five years ground water travel time plus 1000 feet for land disposal facilities.

(6) The plan approval application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(7) The plan approval application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(8) The Executive Secretary may require the applicant to conduct vadose zone or other near surface monitoring.

(9) Emergency response and safety.

(a) The plan approval application shall demonstrate the availability and adequacy of emergency services, including medical and fire response. The application shall provide evidence that the applicant has coordinated emergency response plans with local and regional emergency response resources.

(b) The plan approval application shall include plans for responding to emergencies both at the site and those involving the transport of wastes within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license.

(c) The plan approval application shall show proposed routes for transportation of radioactive wastes within the state. The Executive Secretary will not approve plans that propose radioactive waste transportation routes over roads or bridges where weight restrictions would be exceeded. The Executive Secretary will not approve plans that pose adverse impact or risk of harm to inhabited areas. The plan approval application shall address risks to inhabited areas, including both residential and non-residential areas; the width, condition, and types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety; alternate emergency access to the facility; the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of accidents, including spills and fires.

(10) Siting Authority. The Executive Secretary recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Executive Secretary pursuant to R313-25 and R313-22.

(2) Persons shall file an application with the Executive Secretary pursuant to R313-22-32 and obtain a license as provided in R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R313-25-6 through R313-25-10.

R313-25-6. General Information.

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the

principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under R313-25-6(1).

(2) Qualifications of the applicant shall include the following;

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in R313-25-6(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-7. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in R313-25-19 and monitoring of occupational radiation exposure to ensure compliance with the requirements of R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in R313-25-33.

R313-25-8. Technical Analyses.

The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(1) Analyses demonstrating that the general population

will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(2) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(3) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(4) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

R313-25-9. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of R313-25-16 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-10. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of R313-25.

R313-25-11. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Executive Secretary upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of R313-25-19;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of R313-25-20;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in R313-25-11(3) through (6) and that the institutional control meets the requirements of R313-25-28.

(9) the financial or surety arrangements meet the requirements of R313-25.

R313-25-12. Conditions of Licenses.

(1) A license issued under R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Executive Secretary finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Executive Secretary may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Executive Secretary.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Executive Secretary. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Executive Secretary pursuant to R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Executive Secretary has inspected the land disposal facility and has found it to conform with the description, design, and

construction described in the application for a license.

(7) The Executive Secretary may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Executive Secretary deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Executive Secretary deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-13. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under R313-25-14 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with R313-25-5 through 25-10. Applications for closure shall be filed in accordance with R313-25-14. Information contained in previous applications, statements, or reports filed with the Executive Secretary under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Executive Secretary has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Executive Secretary will apply the criteria set forth in R313-25-11.

R313-25-14. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Executive Secretary, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under R313-25-7(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with R313-25-14(1), the Executive Secretary shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of R313-25 will be met.

R313-25-15. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Executive Secretary in accordance with R313-25-16. The licensee shall remain responsible for the disposal site for an additional five years. The Executive Secretary may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-16. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Executive Secretary finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of R313-25 have been met;

(3) that funds for care and records required by R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under R313-25-11(8) will be met.

R313-25-17. Termination of License.

(1) Following the period of institutional control needed to meet the requirements of R313-25-11, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of R313-22-32.

(3) A license shall be terminated only when the Executive Secretary finds:

(a) that the institutional control requirements of R313-25-11(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Executive Secretary

immediately prior to license termination.

R313-25-18. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in R313-25-19 and 25-22.

R313-25-19. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem)committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-20. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-21. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by R313-25-19. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-22. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-23. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Executive Secretary will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of R313-25 or significantly mask the environmental monitoring program.

R313-25-24. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will

not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-25. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to R313-15-307 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of R313-15-308(2).

(2) Wastes designated as Class C pursuant to R313-15-307 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of R313-25-25(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of R313-15-105 at the time the license is transferred pursuant to R313-25-16.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in R313-25-26(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Executive Secretary for approval.

R313-25-26. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-27. Alternative Requirements for Design and Operations.

The Executive Secretary may, upon request or on his own initiative, authorize provisions other than those set forth in R313-25-24 and 25-26 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of R313-25.

R313-25-28. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be

limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Executive Secretary, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Executive Secretary, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Executive Secretary approved cost estimates reflecting the Executive Secretary approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Executive Secretary will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Executive Secretary will accept these arrangements only if they are considered adequate to satisfy the requirements of R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Executive Secretary to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Executive Secretary; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Executive Secretary, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Executive Secretary include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Executive Secretary. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Executive Secretary, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Executive Secretary approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Executive Secretary to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in R313-25-32(1) relevant to institutional control shall be submitted to the Executive Secretary for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Executive Secretary.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in R313-25-33(4) as a condition of license termination unless the Executive Secretary otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to R313-

25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Executive Secretary at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Executive Secretary regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Executive Secretary as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Executive Secretary in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to R313-25, shall submit annual reports to the Executive Secretary. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Executive Secretary may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Executive Secretary to perform, any tests the Executive Secretary deems appropriate or necessary for the administration of the rules in R313-25, including, but not limited to, tests of;

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Executive Secretary Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Executive Secretary, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Executive Secretary for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Executive Secretary may copy and take away copies of, for the Executive Secretary's use, any records required to be kept pursuant to R313-25.

KEY: radiation, radioactive waste disposal

March 10, 2000	**19-3-104**
Notice of Continuation May 1, 1997	**19-3-108**

R313. Environmental Quality, Radiation Control.
R313-34. Requirements for Irradiators.
R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 2000 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Executive Secretary or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the 2000 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35; and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiator, survey, radiation, radiation safety
March 10, 2000 19-3-104

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-1A. Statement of Intent.

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-2. Scope.

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 High Quality Waters - Category 1

Waters of high quality which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as High Quality Waters - Category 1. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as High Quality Waters - Category 1 are listed in R317-2-12.1.

3.3 High Quality Waters - Category 2

High Quality Waters - Category 2 are designated surface water segments which are treated as High Quality Waters - Category 1 except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Waters of the state designated as High Quality Waters - Category 2 are listed in R317-2-12.2.

3.4 High Quality Waters - Category 3

High Quality Waters-Category 3 are designated surface water segments where a point source discharge may be permitted under the conditions and following the review outlined in this section. The High Quality Waters Category 3 designation may be applied to waters with quality higher than that necessary to support the designated beneficial uses of those waters.

Drinking water sources or waters with special value for recreation or fisheries are candidates to be designated as High Quality Waters - Category 3. Before new point source discharges, or increases to existing point source discharges, may be allowed, the State shall assure that (1) there shall be achieved all statutory and regulatory requirements for all new and existing point sources and there shall be achieved all required cost-effective and reasonable best management practices for nonpoint source control in the immediate area of the discharge, (2) there are no reasonable non-degrading or less degrading alternatives to the discharge (based on information provided by the discharger), (3) the proposed activity has economic and social importance, and (4) water quality standards will not be violated by the discharge.

In addition, depending upon the location of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or instream water quality standards, may be required in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems. Additional monitoring may include analyses for viruses, cryptosporidium, or other pathogenic organisms. The additional treatment/effluent

limits/monitoring which may be required will be determined in consultation with the Division of Drinking Water and the downstream drinking water users.

The review required by this section may be waived by the Executive Secretary where the volume of the discharge is small compared to the flow of the receiving stream. In general, this waiver would be considered where the ratio of the average stream flow to the discharged flow is expected to be greater than 100:1, and the ratio of the 7Q10 (7 day-10 year) low flow to the discharge flow is expected to be greater than 25:1 where the increase in concentration of pollutants in the stream at 7Q10 is low flow is expected to be less than 10%, or based on other site specific criteria.

Waters of the state designated as High Quality Waters -- Category 3 are listed in R317-2-12.3

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996 and 1999 Reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not to exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

a. Bioaccumulation in fish tissues or wildlife,

b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,

c. Potential human exposure to pollutants resulting from drinking water or recreational activities,

d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.

e. Toxicity of the substance discharged,

f. Zone of passage for migrating fish or other species (including access to tributaries), or

g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for primary contact recreation such as swimming.

b. Class 2B -- Protected for secondary contact recreation such as boating, wading, or similar uses.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake. Protected for primary and secondary contact recreation, aquatic wildlife, and mineral extraction.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these regulations for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in

R317-1-3.1. The Board may allow site specific modifications based upon bioassay or other tests performed in accordance with standard procedures determined by the Board.

7.2 Narrative Standards

It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Utah Division of Water Quality by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

R317-2-12. High Quality Waters.

12.1 High Quality Waters - Category 1.

In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 1:

12.1.1 All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

All High Quality Waters - Category 2 as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

12.1.2 Other surface waters, which may include segments within U.S. National Forests as follows:

12.1.2.1 Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

12.1.2.2 Green River Drainage

Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Avintaquin Creek, from confluence with Strawberry River to confluence with Cottonwood Creek.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

12.1.2.3 Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

12.1.2.4 Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

12.1.2.5 Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

12.1.2.6 Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from U.S. Highway 189 to headwaters.

Weber River and tributaries, from U.S. Highway 189 near Oakley to headwaters.

12.1.2.7 Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

12.1.2.8 Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

12.1.2.9 Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

12.1.2.10 Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

12.1.2.11 Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12.1.2.12 Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 High Quality Waters - Category 2.

In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 2:

12.2.1 Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream

12.3 High Quality Waters - Category 3.

In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 3:

12.3.1 Provo River Drainage

Provo River and tributaries from Murdock Diversion to U.S. Forest Boundary, including Deer Creek Reservoir and Jordanelle Reservoir.

R317-2-13. Classification of Waters of the State.

13.1 Upper Colorado River Basin

a. Colorado River Drainage

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell, except as listed separately		2B	3B	4
Escalante River and tributaries, from Lake Powell to confluence with Boulder Creek		2B	3C	
Escalante River and tributaries, from confluence with Boulder Creek, including Boulder Creek, to headwaters		2B	3A	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park		2B	3A	4
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2B	3A	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Muddy Creek and tributaries,				

from confluence with Fremont River to Highway U-10 crossing		2B	3C	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters		2B 3A		4
Quitchupah Creek and tributaries, from Highway U-10 crossing to headwaters		2B 3A		4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B 3A		4
San Juan River and tributaries, from Lake Powell to state line except as listed below:	1C	2B	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B 3A		4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B 3A		4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B 3A		4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B 3A		4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B 3A		4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B 3A		4
Colorado River and tributaries, from Lake Powell to state line except as listed separately	1C	2B	3B	4
Indian Creek and tributaries, from confluence with Colorado River to Newspaper Rock State Park		2B	3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B 3A		4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B 3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B 3A		4
LaSal Creek and tributaries, from state line to headwaters		2B 3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B 3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2B	3B	4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B	3C	4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B	3C	4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir		2B	3C	4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B 3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B	3C	4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B 3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing		2B	3C	4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B 3A		4
Cottonwood Canal, Emery County	1C	2B		4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course		2B	3C	4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Water Treatment Plant intake.		2B 3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B 3A		4
Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B 3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B 3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B 3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B 3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B 3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D 4
Willow Creek and tributaries				

(Uintah County), from confluence with Green River to headwaters		2B 3A		4
Bitter Creek and Tributaries from White River to Headwaters		2B 3A		4
White River and tributaries, from confluence with Green River to state line		2B	3B	4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake		2B	3B	4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B 3A		4
Uinta River and tributaries, from confluence with Duchesne River to Highway US-40 crossing		2B	3B	4
Uinta River and tributaries, from Highway US-40 crossing to headwaters		2B 3A		4
Power House Canal from confluence with Uinta River to headwaters		2B 3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B 3A		4
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		4
Whiterocks River and Canal, from Tridell Water Treatment Plant to headwaters	1C	2B 3A		4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B	4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B 3A		4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B	4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B 3A		4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B 3A		
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B 3A		4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B 3A		4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:		2B 3A		4
Sears Creek and tributaries, Daggett County		2B 3A		
Tolivers Creek and tributaries, Daggett County		2B 3A		
Red Creek and tributaries, from confluence with Green River to state line		2B	3C	4
Jackson Creek and tributaries, Daggett County		2B 3A		
Davenport Creek and tributaries, Daggett County		2B 3A		
Goslin Creek and tributaries, Daggett County		2B 3A		
Gorge Creek and tributaries, Daggett County		2B 3A		
Beaver Creek and tributaries, Daggett County		2B 3A		
O-Wi-Yu-Kuts Creek and tributaries, County		2B 3A		
Tributaries to Flaming Gorge Reservoir, except as listed below		2B 3A		4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B 3A		
All Tributaries to the Green River above Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B 3A		4

13.2 Lower Colorado River Basin
a. Virgin River Drainage

TABLE

Virgin River and tributaries (except as listed below), from state line to Quail Creek diversion		2B	3B	4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters	1C	2B 3A		4
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B	4
Leed's Creek, from confluence with Quail Creek to headwaters		2B 3A		4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B 3A		4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B 3A		4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B 3A		4
Virgin River and tributaries (except as listed below), from the Quail Creek diversion to headwaters	1C	2B	3C	4
North Fork Virgin River and tributaries	1C	2B 3A		4
East Fork Virgin River, from town of Glendale to headwaters		2B 3A		4

Kolob Creek, from confluence with Virgin River to headwaters		2B	3A		4
Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3A		4

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B		3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A		4
Johnson Wash and tributaries, from state line to confluence with Red Wash		2B		3C	4
Johnson Wash and tributaries, from confluence with Red Wash to headwaters		2B	3A		4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D	4
Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A		4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A		4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B		3C	4
Box Elder Creek, from Brigham City Reservoir (the Mayor's Pond) to headwaters		2B	3A		4
Malad River and tributaries, from confluence with Bear River to state line		2B		3C	
Little Bear River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B	3A		4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A		4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A		4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A		4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A		4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B		4
High Creek and tributaries, from confluence with Cub River to headwaters		2B	3A		4
Swan Springs tributary to Swan Creek	1C	2B	3A		
All tributaries to Bear Lake from Bear Lake to headwaters		2B	3A		4
Swan Creek and tributaries, from Bear Lake to headwaters		2B	3A		4
Big Creek and tributaries, from Bear Lake to headwaters		2B	3A		4
Bear River and tributaries in Rich County		2B	3A		4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A		4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A		4

13.4 Weber River Basin

a. Weber River Drainage

TABLE

Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B		3C 3D	4
Four Mile Creek from I-15 to headwaters		2B	3A		4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion		2B	3A		4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A		4
Strongs Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters	1C	2B	3A		
Spring Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Ogden River and tributaries, from confluence with Weber River to Pineview Dam		2B	3A		4
Wheeler Creek from confluence with Ogden River to headwaters	1C	2B	3A		4
All tributaries to Pineview Reservoir	1C	2B	3A		4

13.5 Utah Lake-Jordan River Basin

a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B *	3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *		4

Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B *	3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A		4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B		4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A		
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A		
Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir		2B	3A		
Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A		
Emigration Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters		2B	3A		
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B		3C	4
Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters		2B	3A		4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A		4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A		
Deaf Smith Canyon Creek and tributaries	1C	2B	3A		4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A		4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A		
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B	3A		
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B		3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B		3D	

* Site specific criteria for total ammonia and dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion		2B	3A	4
Provo River and tributaries, from Murdock Diversion to headwaters	1C	2B	3A	4
Upper Falls drainage above Provo City diversion	1C	2B	3A	
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A	
Lost Creek and tributaries above Provo City diversion	1C	2B	3A	

c. Utah Lake Drainage

TABLE

American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A	4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction		2B	3B	3D 4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters		2B	3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B	3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B	3B	4
Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters		2B	3B	4
Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge		2B	3B	4
Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way		2B	3B	4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters		2B		3D 4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters		2B	3A	4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way		2B	3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad				

right-of-way to the point of diversion from Spring Creek		2B	3A		4
Hobble Creek and tributaries, from Utah Lake to headwaters		2B	3A		4
Dry Creek and tributaries from Utah Lake (Provo Bay) to Interstate Highway 15		2B		3C	4
Dry Creek and tributaries from Interstate Highway 15 to headwaters		2B	3A		4
Benjamin Slough and tributaries (except Beer Creek) from Utah Lake to headwaters		2B	3B		4
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters		2B		3C	4
All other permanent streams entering Utah Lake		2B	3B		4
Salt Creek, from Nephi diversion to headwaters		2B	3A		4
Currant Creek, from mouth of Goshen Canyon to Mona Reservoir		2B	3A		4
Burriston Creek, from Mona Reservoir to headwaters		2B	3A		4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters		2B	3A		4
Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters		2B	3A		4
Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A		4

13.6 Sevier River Basin
a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except the following		2B	3C		4
Beaver River and tributaries from Minersville City to headwaters		2B	3A		4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:		2B	3A		4
Pioneer Creek and tributaries, Millard County		2B	3A		4
Chalk Creek and tributaries, Millard County		2B	3A		4
Meadow Creek and tributaries, Millard County		2B	3A		4
Corn Creek and tributaries, Millard County		2B	3A		4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabella Diversion from U.S. National Forest boundary to headwaters		2B	3A		4
Sevier River and tributaries from Gunnison Bend Reservoir to Annabella Diversion except the following tributaries:		2B	3B		4
Oak Creek and tributaries, Millard County		2B	3A		4
Round Valley Creek and tributaries, Millard County		2B	3A		4
Chicken Creek and tributaries, Juab County		2B	3A		4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except the following tributaries:		2B		3C 3D	4
Twelve Mile Creek and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A		4
Six Mile Creek and tributaries, Sanpete County		2B	3A		4
Manti Creek and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A		4
Ephraim Creek and tributaries, from U.S. Forest Service to headwaters		2B	3A		4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters		2B	3A		4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A		4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters		2B	3A		4
Judd Creek and tributaries, Juab County		2B	3A		4
Meadow Creek and tributaries, Juab County		2B	3A		4
Cherry Creek and tributaries, Juab County		2B	3A		4
Tanner Creek and tributaries, Juab County					4
Baker Hot Springs, Juab County		2B		3D	4
Sevier River and tributaries, from Annabella diversion to headwaters		2B	3A		4
Monroe Creek and tributaries, from diversion to headwaters		2B	3A		4
Little Creek and tributaries, from irrigation diversion to headwaters		2B	3A		4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters		2B	3A		4
Coal Creek and tributaries		2B	3A		4
Summit Creek and tributaries		2B	3A		4

Parowan Creek and tributaries		2B	3A		4
Duck Creek and tributaries	1C	2B	3A		4

13.7 Great Salt Lake Basin

a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County		2B	3A		4
Muddy Creek and tributaries, Box Elder County		2B		3C	4
Dove Creek and tributaries, Box Elder County		2B	3A		4
Pine Creek and tributaries, Box Elder County		2B	3A		4
Rock Creek and tributaries, Box Elder County		2B	3A		4
Fisher Creek and tributaries, Box Elder County		2B	3A		4
Dunn Creek and tributaries, Box Elder County		2B	3A		4
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A		4
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A		4
Indian Creek and tributaries, Box Elder County		2B	3A		4
Tenmile Creek and tributaries, Box Elder County		2B	3A		4
Curlew (Deep) Creek, Box Elder County		2B	3A		4
Blue Creek and tributaries, from Great Salt Lake to Blue Creek Reservoir		2B		3D	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters		2B	3B		4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B	3A		4
North Willow Creek and tributaries, Tooele County		2B	3A		4
South Willow Creek and tributaries, Tooele County		2B	3A		4
Hickman Creek and tributaries, Tooele County		2B	3A		4
Barlow Creek and tributaries, Tooele County		2B	3A		4
Clover Creek and tributaries, Tooele County		2B	3A		4
Faust Creek and tributaries, Tooele County		2B	3A		4
Vernon Creek and tributaries, Tooele County		2B	3A		4
Ophir Creek and tributaries, Tooele County		2B	3A		4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A		4
Middle Canyon Creek and tributaries, Tooele County		2B	3A		4
Tank Wash and tributaries, Tooele County		2B	3A		4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A		4
Thomas Creek and tributaries, Juab County		2B	3A		4
Indian Farm Creek and tributaries, Juab County		2B	3A		4
Cottonwood Creek and tributaries, Juab County		2B	3A		4
Red Cedar Creek and tributaries, Juab County		2B	3A		4
Granite Creek and tributaries, Juab County		2B	3A		4
Trout Creek and tributaries, Juab County		2B	3A		4
Birch Creek and tributaries, Juab County		2B	3A		4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A		4
Cold Spring, Juab County		2B		3C	3D
Cane Spring, Juab County		2B		3C	3D
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B	3A		4
Snake Creek and tributaries, Millard County		2B	3B		4
Salt Marsh Spring Complex, Millard County		2B	3A		
Twin Springs, Millard County		2B	3B		
Tule Spring, Millard County		2B		3C	3D
Coyote Spring Complex, Millard County		2B		3C	3D
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B		3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B	3A		4
Shoal Creek and tributaries, Iron County		2B	3A		4

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B	3A		4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B		4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
South Fork Kays Creek and					

tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Snow Creek and tributaries		2B		3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B		4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15		2B		3C	4
Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89		2B	3B		4
Baer Creek and tributaries, from Highway US-89 to headwaters	1C	2B	3A		4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B		4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A		4
Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B	3A		4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A		4
Deuel Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A		4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3A		4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B		4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
Hobart Slough		2B		3C	4
Hooper Slough		2B		3C	4
Willard Slough		2B		3C	4
Willard Creek to Headwaters	1C	2B	3A		4
Chicken Creek to Headwaters	1C	2B	3A		4
Cold Water Creek to Headwaters	1C	2B	3A		4
One House Creek to Headwaters	1C	2B	3A		4
Garner Creek to Headwaters	1C	2B	3A		4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A		4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Birch Creek and tributaries, from state line to headwaters		2B	3A		4
Pole Creek and tributaries, from state line to headwaters		2B	3A		4
Goose Creek and tributaries		2B	3A		4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A		4
Meadow Creek and tributaries, from state line to headwaters		2B	3A		4

13.9 All irrigation canals and ditches statewide, except as otherwise designated 4

13.10 All drainage canals and ditches statewide, except as otherwise designated 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas

TABLE

Bear River National Wildlife Refuge, Box Elder County				3B	3D
Brown's Park Waterfowl Management Area, Daggett County			3A		3D
Clear Lake Waterfowl Management Area, Millard County				3C	3D
Desert Lake Waterfowl Management Area, Emery County				3C	3D
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties				3C	3D
Fish Springs National Wildlife Refuge, Juab County				3C	3D
Harold Crane Waterfowl Management Area, Box Elder					

County			3C	3D	
Howard Slough Waterfowl Management Area, Weber County			3C	3D	
Locomotive Springs Waterfowl Management Area, Box Elder County			3B	3D	
Ogden Bay Waterfowl Management Area, Weber County			3C	3D	
Ouray National Wildlife Refuge, Uintah County			3B	3D	
Powell Slough Waterfowl Management Area, Utah County			3C	3D	
Public Shooting Grounds Waterfowl Management Area, Box Elder County			3C	3D	
Salt Creek Waterfowl Management Area, Box Elder County			3C	3D	
Stewart Lake Waterfowl Management Area, Uintah County			3B	3D	
Timpie Springs Waterfowl Management Area, Tooele County			3B	3D	

13.12 Lakes and Reservoirs (20 Acres or Larger). All lakes not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir		2B	3A		4
Manderfield Reservoir		2B	3A		4
LaBaron Reservoir		2B	3A		4
Middle Kent's Lake		2B	3A		4
Minersville Reservoir		2B	3A	3D	4
Puffer Lake		2B	3A		
Three Creeks Reservoir		2B	3A		4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)		2B	3B	3D	4
Etna Reservoir			3A		4
Lynn Reservoir			3A		4
Mantua Reservoir		2B	3A		4
Willard Bay Reservoir	1C 2A	2B	3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir	2A	2B	3A		4
Newton Reservoir		2B	3A		4
Porcupine Reservoir		2B	3A		4
Pelican Pond		2B	3B		4
Tony Grove Lake		2B	3A		4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A		4
Olsen Pond		2B	3B		4
Scofield Reservoir	1C	2B	3A		4

e. Daggett County

TABLE

Browne Reservoir		2B	3A		4
Daggett Lake		2B	3A		4
Flaming Gorge Reservoir (Utah portion)	1C 2A	2B	3A		4
Long Park Reservoir		2B	3A		4
Sheep Creek Reservoir		2B	3A		4
Spirit Lake		2B	3A		4
Upper Potter Lake		2B	3A		4

f. Davis County

TABLE

Farmington Ponds		2B	3A		4
Kaysville Highway Ponds		2B	3A		4
Holmes Creek Reservoir		2B	3B		4

g. Duchesne County

TABLE

Allred Lake		2B	3A		4
Atwine Lake		2B	3A		4
Atwood Lake		2B	3A		4
Betsy Lake		2B	3A		4
Big Sandwash Reservoir	1C	2B	3A		4
Bluebell Lake		2B	3A		4
Brown Duck Reservoir		2B	3A		4
Butterfly Lake		2B	3A		4
Cedarview Reservoir		2B	3A		4
Chain Lake #1		2B	3A		4
Chepeta Lake		2B	3A		4
Clements Reservoir		2B	3A		4
Cleveland Lake		2B	3A		4
Cliff Lake		2B	3A		4
Continent Lake		2B	3A		4
Crater Lake		2B	3A		4
Crescent Lake		2B	3A		4
Daynes Lake		2B	3A		4
Dean Lake		2B	3A		4
Doll Lake		2B	3A		4
Drift Lake		2B	3A		4
Elbow Lake		2B	3A		4
Farmer's Lake		2B	3A		4
Fern Lake		2B	3A		4

Fish Hatchery Lake			2B	3A		4
Five Point Reservoir			2B	3A		4
Fox Lake Reservoir			2B	3A		4
Governor's Lake			2B	3A		4
Granddaddy Lake			2B	3A		4
Hoover Lake			2B	3A		4
Island Lake	1C		2B	3A		4
Jean Lake			2B	3A		4
Jordan Lake			2B	3A		4
Kidney Lake			2B	3A		4
Kidney Lake West			2B	3A		4
Lily Lake			2B	3A		4
Midview Reservoir (Lake Boreham)			2B		3B	4
Milk Reservoir			2B	3A		4
Mirror Lake			2B	3A		4
Mohawk Lake			2B	3A		4
Moon Lake	1C	2A	2B	3A		4
North Star Lake			2B	3A		4
Palisade Lake			2B	3A		4
Pine Island Lake			2B	3A		4
Pinto Lake			2B	3A		4
Pole Creek Lake			2B	3A		4
Potter's Lake			2B	3A		4
Powell Lake			2B	3A		4
Pyramid Lake		2A		3A		4
Queant Lake			2B	3A		4
Rainbow Lake			2B	3A		4
Red Creek Reservoir			2B	3A		4
Rudolph Lake			2B	3A		4
Scout Lake		2A	2B	3A		4
Spider Lake			2B	3A		4
Spirit Lake			2B	3A		4
Starvation Reservoir	1C	2A	2B	3A		4
Superior Lake			2B	3A		4
Swasey Hole Reservoir			2B	3A		4
Taylor Lake			2B	3A		4
Thompson Lake			2B	3A		4
Timothy Reservoir #1			2B	3A		4
Timothy Reservoir #6			2B	3A		4
Timothy Reservoir #7			2B	3A		4
Twin Pots Reservoir	1C		2B	3A		4
Upper Stillwater Reservoir	1C		2B	3A		4
X - 24 Lake			2B	3A		4

h. Emery County

TABLE

Cleveland Reservoir			2B	3A		4
Electric Lake			2B	3A		4
Huntington Reservoir			2B	3A		4
Huntington North Reservoir		2A	2B		3B	4
Joe's Valley Reservoir		2A	2B	3A		4
Millsite Reservoir	1C	2A	2B	3A		4

i. Garfield County

TABLE

Barney Lake			2B	3A		4
Cyclone Lake			2B	3A		4
Deer Lake			2B	3A		4
Jacob's Valley Reservoir			2B		3C 3D	4
Lower Bowns Reservoir			2B	3A		4
North Creek Reservoir			2B	3A		4
Panguitch Lake			2B	3A		4
Pine Lake			2B	3A		4
Oak Creek Reservoir (Upper Bowns)			2B	3A		4
Pleasant Lake			2B	3A		4
Posey Lake			2B	3A		4
Purple Lake			2B	3A		4
Raft Lake			2B	3A		4
Row Lake #3			2B	3A		4
Row Lake #7			2B	3A		4
Spectacle Reservoir			2B	3A		4
Tropic Reservoir			2B	3A		4
West Deer Lake			2B	3A		4
Wide Hollow Reservoir			2B	3A		4

j. Iron County

TABLE

Newcastle Reservoir			2B	3A		4
Red Creek Reservoir			2B	3A		4
Yankee Meadow Reservoir			2B	3A		4

k. Juab County

TABLE

Chicken Creek Reservoir			2B		3C 3D	4
Mona Reservoir			2B		3B	4
Sevier Bridge (Yuba) Reservoir		2A	2B		3B	4

l. Kane County

TABLE

Navajo Lake			2B	3A		4

m. Millard County

TABLE

DMAD Reservoir			2B	3B		4
Fools Creek Reservoir			2B		3C 3D	4
Garrison Reservoir (Pruess Lake)			2B	3B		4
Gunnison Bend Reservoir			2B	3B		4

n. Morgan County

TABLE

East Canyon Reservoir	1C	2A	2B	3A		4
Lost Creek Reservoir	1C		2B	3A		4

o. Piute County

TABLE

Barney Reservoir			2B	3A		4
Lower Boxcreek Reservoir			2B	3A		4
Manning Meadow Reservoir			2B	3A		4
Otter Creek Reservoir			2B	3A		4
Piute Reservoir			2B	3A		4
Upper Boxcreek Reservoir			2B	3A		4

p. Rich County

TABLE

Bear Lake (Utah portion)		2A	2B	3A		4
Birch Creek Reservoir			2B	3A		4
Little Creek Reservoir			2B	3A		4
Woodruff Creek Reservoir			2B	3A		4

q. Salt Lake County

TABLE

Decker Lake			2B	3B	3D	4
Lake Mary	1C		2B	3A		
Little Dell Reservoir	1C		2B	3A		
Mountain Dell Reservoir	1C			3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C		2B	3A		4
Dark Canyon Lake	1C		2B	3A		4
Ken's Lake			2B	3A		4
Lake Powell (Utah portion)	1C	2A	2B	3B		4
Lloyd's Lake	1C		2B	3A		4
Monticello Lake			2B	3A		4
Recapture Reservoir			2B	3A		4

s. Sanpete County

TABLE

Duck Fork Reservoir			2B	3A		4
Fairview Lakes	1C		2B	3A		4
Ferron Reservoir			2B	3A		4
Lower Gooseberry Reservoir	1C		2B	3A		4
Gunnison Reservoir			2B		3C	4
Island Lake			2B	3A		4
Miller Flat Reservoir			2B	3A		4
Ninemile Reservoir			2B	3A		4
Palisade Reservoir		2A	2B	3A		4
Rolfson Reservoir			2B		3C	4
Twin Lakes			2B	3A		4
Willow Lake			2B	3A		4

t. Sevier County

TABLE

Annabella Reservoir			2B	3A		4
Big Lake			2B	3A		4
Farnsworth Lake			2B	3A		4
Fish Lake			2B	3A		4
Forsythe Reservoir			2B	3A		4
Johnson Valley Reservoir			2B	3A		4
Koosharem Reservoir			2B	3A		4
Lost Creek Reservoir			2B	3A		4
Redmond Lake			2B		3B	4
Rex Reservoir			2B	3A		4
Salina Reservoir			2B	3A		4
Sheep Valley Reservoir			2B	3A		4

u. Summit County

TABLE

Abes Lake			2B	3A		4
Alexander Lake			2B	3A		4
Amethyst Lake			2B	3A		4
Beaver Lake			2B	3A		4
Beaver Meadow Reservoir			2B	3A		4
Big Elk Reservoir			2B	3A		4
Blanchard Lake			2B	3A		4
Bridger Lake			2B	3A		4
China Lake			2B	3A		4
Cliff Lake			2B	3A		4
Clyde Lake			2B	3A		4
Coffin Lake			2B	3A		4
Cuberant Lake			2B	3A		4
East Red Castle Lake			2B	3A		4
Echo Reservoir	1C	2A	2B	3A		4
Fish Lake			2B	3A		4

Fish Reservoir		2B	3A	4
Haystack Reservoir #1		2B	3A	4
Henry's Fork Reservoir		2B	3A	4
Hoop Lake		2B	3A	4
Island Lake		2B	3A	4
Island Reservoir		2B	3A	4
Jesson Lake		2B	3A	4
Kamas Lake		2B	3A	4
Lily Lake		2B	3A	4
Lost Reservoir		2B	3A	4
Lower Red Castle Lake		2B	3A	4
Lyman Lake	2A	2B	3A	4
Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C 2A	2B	3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4
Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A	4
Bottle Hollow Reservoir		2B	3A	4
Brough Reservoir		2B	3A	4
Calder Reservoir		2B	3A	4
Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C 2A	2B	3A	4
Steinaker Reservoir	1C 2A	2B	3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Salem Pond	2A		3A		4
Silver Flat Lake Reservoir		2B	3A		4
Tibble Fork Resevoir		2B	3A		4
Utah Lake		2B	3B	3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C 2A	2B	3A	4
Jordanelle Reservoir	1C 2A		3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C 2A	2B	3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C 2A	2B	3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake	2B 3A	4
Cook Lake	2B 3A	4
Donkey Reservoir	2B 3A	4
Fish Creek Reservoir	2B 3A	4
Mill Meadow Reservoir	2B 3A	4
Raft Lake	2B 3A	4

bb. Weber County

TABLE

Causey Reservoir	2B 3A	4
Pineview Reservoir	1C 2A 2B 3A	4

13.13 Great Salt Lake

TABLE

Box Elder, Davis, Salt Lake, Tooele, and Weber County	5

13.14 Unclassified Waters

All waters not specifically classified are presumptively classified as 2B, 3D.

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics 2A	2B	Agri-culture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
Max. Total Coliforms	5000	1000	5000	
Max. Fecal Coliforms	2000	200	200	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.05			0.1
Barium	1.0			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.05			0.1
Mercury	0.002			
Selenium	0.01			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Boron				0.75
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha	15			15
Radium 226, 228 (Combined)	5			
Strontium 90	8			
Tritium	20000			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	100			
2,4,5-TP	10			
Endrin	0.2			
Hexachlorocyclohexane (Lindane)	4			
Methoxychlor	100			
Toxaphene	5			
POLLUTION INDICATORS (5)				
Gross Beta (pCi/L)	50			50
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	
Total Suspended Solids (MG/L)		90	90	

FOOTNOTES:

(1) These limits are not applicable to lower water levels in deep impoundments.

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by atomic absorption or inductively coupled plasma (ICP) spectrophotometry.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) Total dissolved solids (TDS) limits may be adjusted if such adjustment does not impair the designated beneficial use of the receiving water.

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) limit for lakes and reservoirs shall be 0.025.

(7) Exceedences of bacteriological numeric criteria from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and Local nonpoint source programs.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife 3A	3B	3C	3D
PHYSICAL				
Total Dissolved Gases	(1)	(1)		
Minimum Dissolved Oxygen (MG/L) (2)				
30 Day Average	6.5	5.5	5.0	5.0
7 Day Average	9.5/5.0	6.0/4.0		
1 Day Average	8.0/4.0	5.0/3.0	3.0	3.0
Max. Temperature (C)	20	27	27	
Max. Temperature Change (C)	2	4	4	
pH (Range)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)	10	10	15	15
METALS (3) (DISSOLVED, UG/L) (4)				
Aluminum				

4 Day Average (12)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
4 Day Average	190	190	190	190
1 Hour Average	360	360	360	360
Cadmium (5)				
4 Day Average	1.1	1.1	1.1	1.1
1 Hour Average	3.9	3.9	3.9	3.9
Chromium (11) (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent) (5)				
4 Day Average	210	210	210	210
1 Hour Average	1700	1700	1700	1700
Copper (5)				
4 Day Average	12	12	12	
1 Hour Average	18	18	18	18
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000
Lead (5)				
4 Day Average	3.2	3.2	3.2	3.2
1 Hour Average	82	82	82	82
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
1 Hour Average (11)	2.4	2.4	2.4	2.4
Nickel (5)				
4 Day Average	160	160	160	160
1 Hour Average	1400	1400	1400	1400
Selenium				
4 Day Average	5.0	5.0	5.0	5.0
1 Hour Average	20	20	20	20
Silver				
1 Hour Average (5)	4.1	4.1	4.1	4.1
Zinc (5)				
4 Day Average	110	110	110	110
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (3)				
Total Ammonia as N (6)				
4 Day Average	(6a)	(6a)		
1 Hour Average	(6b)	(6b)	(6b)	(6b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	
1 Hour Average	0.019	0.019	0.019	(7)
Hydrogen Sulfide (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol (Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha (8)	15	15	15	15
ORGANICS (UG/L) (3)				
Aldrin (Maximum)	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
DDT and Metabolites				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Dieldrin				
4 Day Average	0.0019	0.0019	0.0019	0.0019
1 Hour Average	1.25	1.25	1.25	1.25
Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.0023	0.0023	0.0023	0.0023
1 Hour Average	0.09	0.09	0.09	0.09
Guthion (Maximum)	0.01	0.01	0.01	0.01
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Parathion (Maximum)	0.04	0.04	0.04	0.04
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
1 Hour Average	2.0	2.0	2.0	2.0
Pentachlorophenol (9)				
4 Day Average	13	13	13	13
1 Hour Average	20	20	20	20
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (8)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P (MG/L) (10)	0.05	0.05		
Total Suspended Solids (MG/L)(8)	35	90	90	

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(3) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(4) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by atomic absorption spectrophotometry or inductively coupled plasma (ICP).

(5) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be appied. See Table 2.14.3 for complete equations for hardness and conversion factors.

(6) Un-ionized ammonia toxicity is dependent upon the temperature and pH of the waterbody. For detailed explanation refer to Federal Register, vol. 50, 30784, July 29, 1985.

The following equations are used to calculate criteria concentrations:

(6a) The 4-Day average (chronic) concentration of un-ionized ammonia in mg/l as N is (0.80 / FT / FPH / RATIO) * 0.822, where

FT = $10^{0.03(20-TCAP)}$; T is greater than or equal to TCAP and less than or equal to 30

= $10^{0.03(20-T)}$; T is greater than or equal to 0 and less than or equal to TCAP.

FPH = 1; pH is greater than or equal to 8.0 and less than or equal to 9.0.

= $(1 + 10^{7.4 - pH})$ / 1.25 pH is greater than or equal to 6.5 and less than 8.0

T = degrees C, and

TCAP = 15 C for salmonids or other sensitive coldwater species, or

= 20 C for salmonids and other sensitive coldwater species absent.

RATIO = 13.5; pH is greater than or equal to 7.7 and less than or equal to 9.0.

= $20(10^{7.7-pH})$ / $1 + 10^{7.4 - pH}$); pH is greater than or equal to 6.5 and less than or equal to 7.7.

(6b) The 1-Hour average (acute) concentration of un-ionized ammonia in mg/l as N is (0.52 / FT / FPH / 2) * 0.822

Where:

FT = $10^{0.03(20-TCAP)}$; T is greater or equal to TCAP and less than or equal to 30.

= $10^{0.03(20-T)}$; T is greater than or equal to 0 and less than or equal to TACP.

FPH = 1; pH is greater than or equal to 8.0 and less than or equal to 9.0.

= $(1 + 10^{7.4 - pH})$ / 1.25 pH is greater than or equal to 6.5 or less than 8.0.

T = degrees C, and

TCAP = 20 C for salmonids or other sensitive coldwater species, or

TCAP = 25 C for salmonids and other sensitive coldwater species absent.

(6c) Total Ammonia in mg/l as N is Un-ionized Ammonia in mg/l as N x $(1 + 10^{pKa - pH})$, where:

pKa = 0.09018 + 2729.92 / T

T = Temperature (C) + 273.2

For Tables of values, see following page.

(7) Numeric criteria will be established based on a site-specific assessment of potential impacts to aquatic wildlife.

(8) Investigations should be conducted to develop more information where these levels are exceeded.

(9) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(10) Total Phosphorus as P (mg/l) limit for lakes and reservoirs shall be 0.025.

(11) Total recoverable metals to dissolved metals conversion factors must be applied to arrive at correct dissolved metals criteria. The conversion factors are: chronic helavalent chromium criteria, 0.962; acute hexavalent chromium criteria, 0.982; acute mercury criteria, 0.850.

(12) The criterion for aluminum will be implemented as follows: Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)
FOR CLASS 3A WATERS
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	28.7	26.8	25.4	24.4	23.8	16.6	11.8
7.00	23.1	21.6	20.5	19.7	19.2	13.4	9.52
7.50	14.3	13.4	12.7	12.3	12.0	8.42	5.99
8.00	6.55	6.14	5.86	5.68	5.59	3.97	2.87
8.50	2.11	1.99	1.93	1.90	1.92	1.40	1.05
9.00	0.70	0.68	0.68	0.70	0.75	0.59	0.48

TABLE
4-DAY AVERAGE (CHRONIC)CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)
FOR CLASS 3A WATERS
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	2.49	2.33	2.21	2.12	1.46	1.02	0.72
7.00	2.49	2.33	2.21	2.13	1.47	1.03	0.73
7.50	2.50	2.34	2.22	2.14	1.48	1.04	0.74
8.00	1.49	1.40	1.33	1.29	0.90	0.64	0.46
8.50	0.48	0.45	0.44	0.43	0.31	0.23	0.17
9.00	0.16	0.16	0.16	0.16	0.12	0.10	0.08

TABLE
1-HOUR AVERAGE (ACUTE)CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)
FOR CLASS 3B, 3C, 3D WATERS
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	28.7	26.8	25.4	24.4	23.8	23.5	16.6
7.00	23.1	21.6	20.5	19.7	19.2	19.0	13.5
7.50	14.3	13.4	12.7	12.3	12.0	11.9	8.47
8.00	6.55	6.14	5.86	5,68	5.59	5.61	4.05
8.50	2.11	1.99	1.93	1.90	1.92	1.98	1.49
9.00	0.70	0.68	0.68	0.70	0.75	0.83	0.68

TABLE
4-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)
FOR CLASS 3B WATERS
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	2.49	2.33	2.21	2.12	2.07	1.44	1.02
7.00	2.49	2.33	2.21	2.13	2.07	1.45	1.03
7.50	2.50	2.34	2.22	2.14	2.09	1.47	1.04
8.00	1.49	1.14	1.33	1.29	1.27	0.90	0.65
8.50	0.48	0.45	0.44	0.43	0.44	0.32	0.24
9.00	0.16	0.16	0.16	0.16	0.17	0.13	0.11

TABLE 2.14.3a
EQUATIONS FOR PARAMETERS WITH
HARDNESS (1) DEPENDENCE, INCLUDING CONVERSION FACTORS
FOR TOTAL RECOVERABLE TO DISSOLVED METALS

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	CFx $e^{(0.7852(\ln(hardness))-3.490)}$ CF = 1.101672 - (ln hardness)(0.041838)
CHROMIUM (TRIVALENT)	CFx $e^{(0.8190(\ln(hardness))+1.561)}$ CF = 0.860
COPPER	CFx $e^{(0.8545(\ln(hardness))-1.465)}$ CF = 0.960
LEAD	CFx $e^{(1.273(\ln(hardness))-4.705)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	CFx $e^{(0.8460(\ln(hardness))+1.1645)}$ CF = 0.997
SILVER	N/A
ZINC	Cfx $e^{(0.8473(\ln(hardness))+0.7614)}$ CF = 0.986

TABLE 2.14.3b
EQUATIONS FOR PARAMETERS WITH
HARDNESS (1) DEPENDENCE, INCLUDING CONVERSION FACTORS
FOR TOTAL RECOVERABLE TO DISSOLVED METALS

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	CFx $e^{(1.128(\ln(hardness))-3.828)}$ CF = 1.136672 -(ln hardness)(0.41383)
CHROMIUM (TRIVALENT)	CFx $e^{(0.8190(\ln(hardness))+3.688)}$ CF = 0.316
COPPER	CFx $e^{(0.9422(\ln(hardness))-1.464)}$ CF = 0.960
LEAD	CFx $e^{(1.273(\ln(hardness))-1.460)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	CFx $e^{(0.8460(\ln(hardness))+3.3612}$ CF= 0.998
SILVER	CFx $e^{(1.72(\ln(hardness))-6.52}$ CF = 0.85
ZINC	CFx $e^{(0.8473(\ln(hardness))+0.8604}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH))-5.290}$	$e^{(1.005(pH))-4.830}$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR TOTAL AMMONIA AND
DISSOLVED OXYGEN FOR JORDAN RIVER AND SURPLUS CANAL SEGMENTS
(SEE SECTION 2.13)

DISSOLVED OXYGEN:
May-July

7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l

August-April

30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

Total Ammonia as N:

(1) The maximum concentration of unionized ammonia should not exceed the numerical value given by the following:

0.15 X (f(T) / f(pH)) X 2.989

where:

f(T) = 1; T greater than or equal to 10C

= $(1 + 10^{(9.73-pH)} / 1 + 10^{(pkt - pH)})$; T less than 10C

f(pH) = $1 + 10^{(1.03(7.32-pH))}$

pkt = 0.090 + (2730 / (T + 273.2))

(2) The average concentration of unionized ammonia over any 30 consecutive days should be less than the value given by the following:

0.031 X (f(T) / f(pH)) X 2.10

where:

f(pH) = 1; pH greater than or equal to 7.7

= $10^{(0.74(7.7-pH))}$; pH less than 7.7

f(T) = 1; T greater than or equal to 10C

$= (1 + 10^{(9.73-pH)}) / (1 + 10^{(pKt - pH)})$; T less than 10C

(3) Total Ammonia in mg/l as N is Un-ionized Ammonia in mg/l as N x $(1 + 10^{pKa - pH})$, where:

pKa = 0.09018 + 2729.92 / T

T = Temperature (C) + 273.2

TABLE
MAXIMUM CONCENTRATION (ACUTE)
TOTAL AMMONIA AS N (MG/L)
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	95.3	95.3	95.3	64.9	44.7	31.2	22.1
6.75	88.1	88.1	88.1	60.0	41.4	28.9	20.4
7.00	76.9	76.9	76.9	52.4	35.1	25.3	17.9
7.25	62.3	62.3	62.3	42.4	29.3	20.5	14.6
7.50	46.3	46.3	46.3	31.6	21.9	15.4	10.9
7.75	31.8	31.8	31.8	21.7	15.1	10.6	7.60
8.00	20.5	20.5	20.4	14.0	9.79	6.94	5.01
8.25	12.6	12.6	12.6	8.70	6.12	4.40	3.22
8.50	7.60	7.60	7.60	5.30	3.79	2.77	2.08
8.75	3.75	3.75	3.75	2.69	1.99	1.52	1.20
9.00	2.80	2.80	2.80	2.05	1.55	1.21	0.99

TABLE
30-DAY AVERAGE CONCENTRATION (CHRONIC)
TOTAL AMMONIA AS N (MG/L)
TEMPERATURE (C)

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	14.3	14.3	14.3	9.74	6.72	4.69	3.32
6.75	12.3	12.3	12.3	8.40	5.79	4.05	2.86
7.00	10.6	10.6	10.6	7.24	5.00	3.49	2.47
7.25	9.17	9.72	9.16	6.24	4.31	3.02	2.14
7.50	7.91	7.91	7.91	5.40	3.73	2.62	1.86
7.75	6.29	6.29	6.28	4.30	2.98	2.10	1.50
8.00	3.56	3.56	3.56	2.44	1.71	1.21	0.87
8.25	2.03	2.03	2.03	1.40	0.99	0.71	0.52
8.50	1.17	1.17	1.17	0.82	0.58	0.43	0.32
8.75	0.56	0.56	0.56	0.40	0.30	0.23	0.18
9.00	0.41	0.41	0.41	0.30	0.23	0.18	0.15

TABLE 2.14.6

List of Human Health Criteria Included in the
1992 National Toxics Rule (NTR)
(Published in the Federal Register)
(For Arsenic, the Maximum Contaminate Level (MCL) applies
instead of the NTR Criteria

	Parameter	CAS No.	Class 1C Maximum Conc., ug/L	Class 3 Maximum Conc., ug/L
	Toxic Organics			
1	Acenaphthene	83-32-9	1200	2700
2	Acrolein	107-02-8	320	780
3	Acrylonitrile	107-13-1	0.059	0.66
4	Benzene	71-43-2	1.2	71
5	Benzidine	92-87-5	0.00012	0.00054
6	Carbon tetrachloride	56-23-5	0.25	4.4
7	Chlorobenzene	108-90-7	680	21000
8	1,2,4-Trichlorobenzene	120-82-1	-	-
9	Hexachlorobenzene	118-74-1	0.00075	0.00077
10	1,2-Dichloroethane	107-06-2	0.38	99
11	1,1,1-Trichloroethane	71-55-6	-	-
12	Hexachloroethane	67-72-1	1.9	8.9
13	1,1-Dichloroethane	75-34-3	-	-
14	1,1,2-Trichloroethane	79-00-5	0.61	42
15	1,1,2,2-Tetrachloro-ethane	79-34-5	0.17	11
16	Chloroethane	75-00-3	-	-
17	Bis(2-chloroethyl) ether	111-44-4	0.031	1.4
18	2-Chloroethyl vinyl ether	110-75-8	-	-
19	2-Chloronaphthalene	91-58-7	1700	4300
20	2,4,6-Trichlorophenol	88-06-2	2.1	6.5
21	p-Chloro-m-cresol	59-50-7	-	-
22	Chloroform (HM)	67-66-3	5.7	470
23	2-Chlorophenol	95-57-8	120	400
24	1,2-Dichlorobenzene	95-50-1	2700	17000
25	1,3-Dichlorobenzene	541-73-1	400	2600
26	1,4-Dichlorobenzene	106-46-7	400	2600
27	3,3'-Dichlorobenzidine	91-94-1	0.04	0.077
28	1,1-Dichloroethylene	75-35-4	0.057	3.2
29	1,2-trans-Dichloroethylene1	56-60-5	700	-
30	2,4-Dichlorophenol	120-83-2	93	790
31	1,2-Dichloropropane	78-87-5	0.52	39
32	1,3-Dichloropropylene	542-75-6	10	1700
33	2,4-Dimethylphenol	105-67-9	540	2300
34	2,4-Dinitrotoluene	121-14-2	0.11	9.1
35	2,6-Dinitrotoluene	606-20-2	-	-
36	1,2-Diphenylhydrazine	122-66-7	0.040	0.54
37	Ethylbenzene	100-41-4	3100	29000
38	Fluoranthene	206-44-0	300	370
39	4-Chlorophenyl phenyl ether	7005-72-3	-	-
40	4-Bromophenyl phenyl ether	101-55-3	-	-
41	Bis(2-chloroisopropyl) ether	39638-32-9	1400	170000
42	Bis(2-chloroethoxy) methane	111-91-1	-	-
43	Methylene chloride (HM)	75-09-2	4.7	1600
44	Methyl chloride (HM)	74-87-3	-	-
45	Methyl bromide (HM)	74-83-9		
46	Bromoform (HM)	75-25-2	4.3	360
47	Dichlorobromomethane (HM)	75-27-4	0.27	22
48	Chlorodibromomethane (HM)	124-48-1	0.41	34
49	Hexachlorobutadiene(c)	87-68-3	0.44	50
50	Hexachlorocyclo-pentadiene	77-47-4	240	17000
51	Isophorone	78-59-1	8.4	600
52	Naphthalene	91-20-3	-	-
53	Nitrobenzene	98-95-3	17	1900
54	2-Nitrophenol	88-75-5	-	-
55	4-Nitrophenol	100-02-7	-	-
56	2,4-Dinitrophenol	51-28-5	70	14000
57	4,6-Dinitro-o-cresol	534-52-1	13	765
58	N-Nitrosodimethylamine	62-75-9	0.00069	8.1
59	N-Nitrosodiphenylamine	86-30-6	5.0	16
60	N-Nitrosodi-n-propylamine	621-64-7	0.005	1.4
61	Pentachlorophenol	87-86-5	0.28	8.2
62	Phenol	108-95-2	21000	4600000
63	Bis(2-ethylhexyl) phthalate	117-881-7	1.8	5.9
64	Butyl benzyl phthala	5-68-7	3000	5200
65	Di-n-butyl phthalate	84-74-2	2700	12000
66	Di-n-octyl phthlate	117-84-0	-	-
67	Diethyl phthalate	84-66-2	23000	120000
68	Dimethyl phthlate	131-11-3	313000	2900000
69	Benzo(a)anthracene (PAH)	56-55-3	0.0028	0.031
70	Benzo(a)pyrene (PAH)	50-32-8	0.0028	0.031
71	Benzo(b)fluoranthene (PAH)	205-99-2	0.0028	0.031
72	Benzo(k)fluoranthene (PAH)	207-08-9	0.0028	0.031
73	Chrysene (PAH)	218-01-9	0.0028	0.031
74	Acenaphthylene (PAH)	208-96-8	-	-
75	Anthracene (PAH)	120-12-7	9600	-
76	Benzo(g,h,i)perylene (PAH)	191-24-2	-	-
77	Fluorene (PAH)	86-73-7	1300	14000
78	Phenanthrene (PAH)	85-01-8	-	-
79	Dibenzo(a,h)anthracene (PAH)	53-70-3	0.0028	0.031
80	Indeno(1,2,3-cd)pyrene (PAH)	193-39-5	0.0028	0.031
81	Pyrene (PAH)	129-00-0	960	11000
82	Tetrachloroethylen	127-18-4	0.80	8.9
83	Toluene	108-88-3	6800	200000
84	Trichloroethylene	79-01-6	2.7	81
85	Vinyl chloride	75-01-4	2.0	525
	Pesticides			
86	Aldrin	309-00-2	0.00013	0.00014
87	Dieldrin	60-57-1	0.00014	0.00014
88	Chlordane	57-74-9	0.00057	0.00059
89	4,4'-DDT	50-29-3	0.00059	0.00059
90	4,4'-DDE	72-55-9	0.00059	0.00059
91	4,4'-DDD	72-54-8	0.00083	0.00084
92	alpha-Endosulfan	115-29-7	0.93	2.0
93	beta-Endosulfan	115-29-7	0.93	2.0
94	Endosulfan sulfate	1031-07-8	0.93	2.0
95	Endrin	72-20-8	0.76	0.81

96	Endrin aldehyde	7421-93-4	0.76	0.81
97	Heptachlor	76-44-8	0.00021	0.00021
98	eptachlor epoxide		-	-
99	alpha-hexachlorocyclo-hexane (alpha-BHC)	319-84-6	0.0039	0.013
100	beta-hexachlorocyclo-hexane (beta-BHC)	319-85-7	0.014	0.046
101	gamma-hexachlorocyclo-hexane (gamma-BHC)	58-89-9	0.019	0.063
102	delta-hexachlorocyclo-hexane (delta-BHC)	319-86-8	-	-
	PCB's			
103	PCB 1242 (Arochlor 1242)	1336-36-3	0.000044	0.000045
104	PCB-1254 (Arochlor 1254)	1336-36-3	0.000044	0.000045
105	PCB-1221 (Arochlor 1221)	1336-36-3	0.000044	0.000045
106	PCB-1232 (Arochlor 1232)	1336-36-3	0.000044	0.000045
107	PCB-1248 (Arochlor 1248)	1336-36-3	0.000044	0.000045
108	PCB-1260 (Arochlor 1260)	1336-36-3	0.000044	0.000045
109	PCB-1016 (Arochlor 1016)	1336-36-3	0.000044	0.000045
	Pesticide			
110	Toxaphene	8001-35-2	0.00073	0.00075
	Metals			
111	Antimony	7440-36-0	14	4300
112	Arsenic	7440-38-2	50	-
113	Asbestos	1332-21-4	7000000 f/l	-
114	Beryllium	7440-41-7	-	-
115	Cadmium	7440-43-9	-	-
116	Chromium (III)	440-47-3	-	-
	Chromium (VI)	-	-	-
117	Copper	7440-50-8	1300	-
118	Cyanide	57-12-5	700	220000
119	Lead	7439-92-1	-	-
120	Mercury	7439-97-6	0.14	0.15
121	Nickel	7440-02-0	610	4600
122	Selenium	7782-49-2	-	-
123	Silver	7440-22-4	-	-
124	Thallium	7440-28-0	1.7	6.3
125	Zinc	7440-66-6	-	-
	Dioxin			
126	Dioxin (2,3,7,8-TCDD)	1746-01-6	0.000000013	0.000000014

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-1. Definitions.

1.1. "Absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.2. "Absorption system" means a device constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.3. "Absorption trench" means standard trenches, shallow trenches with capping fill, and chambered trenches constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.4. "Alternative onsite wastewater system" means a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state, unless all applicable effluent discharge requirements are met.

1.5. "At-Grade" System means an alternative type of onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within a fill body that extends above that grade.

1.6. "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

1.7. "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, an onsite wastewater system or other point of disposal. It is synonymous with "house sewer".

1.8. "Chambered trench" means a type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design, which may be used as a substitute for the gravel media with a perforated distribution pipe.

1.9. "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

1.10. "Conventional system" means an onsite wastewater system which consists of a building sewer, a septic tank, and an absorption system consisting of a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an absorption bed.

1.11. "Curtain drain" means any ground water interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

1.12. "Deep wall trench" means an absorption system consisting of deep trenches filled with clean, coarse filter material, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe, into which septic tank effluent is discharged for seepage into the soil.

1.13. "Division" means the Utah Division of Water Quality.

1.14. "Disposal area" means the entire area used for the subsurface treatment and dispersion of septic tank effluent by an absorption system.

1.15. "Distribution box" means a watertight structure which receives septic tank effluent and distributes it concurrently, in essentially equal portions, into two or more distribution pipes leading to an absorption system.

1.16. "Distribution pipe" means approved perforated pipe used in the dispersion of septic tank effluent into an absorption system.

1.17. "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, excluding non-domestic wastewater. It is synonymous with the term "sewage".

1.18. "Domestic septage" means the semi-liquid material that is pumped out of septic tanks receiving domestic wastewater. It consists of the sludge, the liquid, and the scum layer of the septic tank.

1.19. "Drainage system" means all the piping within public or private premises, which conveys sewage or other liquid wastes to a legal point of treatment and disposal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

1.20. "Drop box" means a watertight structure which receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

1.21. "Dwelling" means any structure, building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments.

1.22. "Earth fill" means an excavated or otherwise disturbed suitable soil which is imported and placed over the native soil. It is characterized by having no distinct horizons or color patterns, as found in naturally developed undisturbed soils.

1.23. "Effluent lift pump" means a pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

1.24. "Ejector pump" means a device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

1.25. "Experimental onsite wastewater system" means an onsite wastewater treatment and disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

1.26. "Final local health department approval" means, for the purposes of the grandfather provisions in R317-4-2 (Table 1, footnote a) and R317-4-3, the approval given by a local health department which would allow construction and installation of subdivision improvements. Note: Even though final local health department approval may have been given for a subdivision, individual lot approval would still be required for

issuance of a building permit on each lot.

1.27. "Ground water" means that portion of subsurface water that is in the zone of soil saturation.

1.28. "Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

1.29. "Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

1.30. "Impervious strata" means a layer which prevents water or root penetration. In addition, it shall be defined as having a percolation rate greater than 60 minutes per inch.

1.31. "Individual wastewater disposal system", is synonymous to an onsite system and, means for the purposes of Section 19-5-102(7), a system for underground treatment and disposal of domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank, and an absorption system.

1.32. "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

1.33. "Liquid waste operation" means any business activity or solicitation by which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.34. "Liquid waste pumper" means any person who conducts a liquid waste operation business.

1.35. "Local health department" means a city-county or multi-county local health department established under Title 26A.

1.36. "Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.

1.37. "Malfunctioning or failing system" means an onsite wastewater system which is not functioning in compliance with the requirements of this regulation and includes, but is not limited to, the following:

A. Absorption systems which seep or flow to the surface of the ground or into waters of the state.

B. Systems which have overflow from any of their components.

C. Systems which, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system.

D. Systems discharging effluent which does not comply with applicable effluent discharge standards.

E. Leaking septic tanks.

1.38. "Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

1.39. "Mound System" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the existing site grade, and the absorption system is contained in a mounded fill body above that grade.

1.40. "Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

1.41. "Non-public water source" means a culinary water source that is not defined as a public water source.

1.42. "Onsite Wastewater System" means a system consisting of a building sewer, a septic tank, and an absorption system for underground treatment and disposal of domestic wastewater which is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums.

1.43. "Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

1.44. "Percolation test" means the method used to measure the percolation rate of water into soil as described in these rules.

1.45. "Permeability" means the rate at which a soil transmits water when saturated.

1.46. "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.47. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety (Section 19-5-102).

1.48. "Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

1.49. "Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in R309.

1.50. "Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

1.51. "Replacement area" means sufficient land with suitable soil, excluding streets, roads, and permanent structures, which complies with the setback requirements of these rules, and is intended for the 100 percent replacement of absorption systems.

1.52. "Restrictive layer" means a layer in the soil that because of its structure or low permeability does not allow water entering from above to pass through as rapidly as it accumulates. During some part of every year, a restrictive layer

is likely to have temporarily perched ground water table accumulated above it.

1.53. "Scum" means a mass of sewage solids floating on the surface of wastes in a septic tank which is buoyed up by entrained gas, grease, or other substances.

1.54. "Seepage pit" means an absorption system consisting of a covered pit into which septic tank effluent is discharged.

1.55. "Septic tank" means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system meeting the requirements of these rules.

1.56. "Septic tank effluent" means partially treated sewage which is discharged from a septic tank.

1.57. "Sewage holding tank" means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.

1.58. "Shall" means a mandatory requirement except when modified by action of the Department on the basis of justifying facts submitted as part of plans and specifications for a specific installation.

1.59. "Shallow trenches with capping fill" means an absorption trench which meets all of the requirements of standard trenches except for the elevation of the installed trench. The minimum depth of installation is 10 inches from the natural existing grade to the trench bottom. The gravel and soil fill required above the pipe are placed as a "cap" to the trenches, installed above the natural existing grade.

1.60. "Should" means recommended or preferred and is intended to mean a desirable standard.

1.61. "Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building, and shall be the only dwelling located on a lot with the usual accessory buildings.

1.62. "Sludge" means the accumulation of solids which have settled in a septic tank or a sewage holding tank.

1.63. "Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

1.64. "Standard Trench" means an absorption system consisting of a series of covered, gravel-filled trenches into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.65. "Waste" or "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water (Section 19-5-102).

1.66. "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.67. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, are not "waters of the state" (Section 19-5-102).

R317-4-2. Onsite Wastewater Systems–Administrative Requirements.

2.1. Scope. This rule shall apply to onsite wastewater systems.

2.2. Failure to Comply With Rules. Any person failing to comply with This rule will be subject to action as specified in Section 19-5-115 and 26A-1-123.

2.3. Onsite Wastewater System Required. The drainage system of each dwelling, building or premises covered herein shall receive all wastewater (including but not limited to bathroom, kitchen, and laundry wastes) and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made as follows:

A. To an onsite wastewater system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of wastewater system acceptable under R317-1, R317-3, R317-5, or R317-560.

2.4. Flows Prohibited From Entering Onsite Wastewater Systems. No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non domestic wastes such as chemicals, paints, or other substances which are detrimental to the proper functioning of an onsite wastewater system shall not be disposed of in such systems.

2.5. No Discharge to Surface Waters or Ground Surface. Effluent from any onsite wastewater system shall not be discharged to surface waters or upon the surface of the ground. Sewage shall not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

2.6. Repair of a Failing or Unapproved System. Whenever an onsite wastewater system is found by the regulatory authority to create or contribute to any dangerous or insanitary condition which may involve a public health hazard, a malfunctioning system, or deviates from the plans and specifications approved by such health authorities, the regulatory authority may order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

2.7. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank wastes pumped out or otherwise disposed of in an approved manner, and the septic tank filled completely with earth, sand, or gravel within 30 days. The

septic tank may also be removed within 30 days , at the owners discretion. The contents of a septic tank or other treatment device shall be disposed of only in a manner approved by the regulatory authority.

R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

A. A building sewer.

B. A septic tank.

C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Water Quality Board. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

A. Name and location of proposed development.

B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.

E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.

F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned , and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.

H. Surface drainage systems shall be included on the plan , as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.

K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits,

are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems , onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.

2. Location of dwelling, with distances from street and property lines.

3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.

4. Capacity of septic tank and dimensions and cross-section of absorption system.

5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4.

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if

necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped indicating approval. Construction shall not commence until the plans have been approved by the regulatory authority. The installer shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:

a. Date of application.

b. Direction of north.

c. Lot size and dimensions.

d. Legal description of property if available.

e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.

f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

g. Location and explanation of type of dwelling to be served by an onsite wastewater system.

h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

i. Location and dimensions of the essential components of the onsite wastewater system.

j. Location of soil exploration pit(s) and percolation test holes.

k. Location of building sewer and water service line to serve dwelling.

l. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

m. Distance to nearest public water main and size of main.

n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

o. Location of easements or drainage right-of-ways affecting the property.

p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.

2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

a. Building drain outlet.

b. The inlet and outlet inverts of the septic tank(s).

c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.

d. The final ground surface over the absorption system.

e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)

9. Absorption system details which include the following:

a. Schedule or grade, material, and diameter of distribution pipes.

b. Required and proposed area for absorption system.

c. Length, slope, and spacing of each distribution pipeline.

d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

h. Cross section of absorption system showing:

i. Depth and width of absorption system excavation.

ii. Depth of distribution pipe.

iii. Depth of filter material.

iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.

v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from onsite wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness before backfilling in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks should be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank , be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

3.6. Appeals. The appeals process for this rule is outlined in R317-1-8.

R317-4-4. Onsite Wastewater Systems Design Requirements.

4.1. Site Location and Installation.

A. Onsite wastewater systems are not suitable for all areas and situations. Location and installation of each system, or other approved means of disposal, shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the State. Systems shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, to include all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement must accommodate the entire onsite wastewater system, including setbacks (see Table 2) which extend beyond the property line.

B. In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to ground water and bedrock; soil characteristics and depth; potential flooding or storm catchment; possible expansion of the system, and future connection to a public sewer system.

4.2. Lot Size Requirements.

A. One of the following two methods shall be used for determining minimum lot size for a single-family dwelling when an onsite wastewater system is to be used:

METHOD 1:-The local health department having jurisdiction may determine minimum lot size. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report which accurately takes into account, but is not limited to, the following factors:

A. Soil type and depth.

B. Area drainage, lot drainage, and potential for flooding.

C. Protection of surface and ground waters.

D. Setbacks from property lines, water supplies, etc.

E. Source of culinary water.

F. Topography, geology, hydrology and ground cover.

G. Availability of public sewers.

H. Activity or land use, present and anticipated.

I. Growth patterns.

J. Individual and accumulated gross effects on water quality.

K. Reserve areas for additional subsurface disposal.

L. Anticipated sewage volume.

M. Climatic conditions.

N. Installation plans for wastewater system.

O. Area to be utilized by dwelling and other structures.

Under this method, local health departments may elect to involve other affected governmental entities and the Division in making joint lot size determinations. The Division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request.

METHOD 2:-Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Table 1 shall be met:

TABLE 1
Minimum Lot Size(a)

WATER SUPPLY	SOIL TYPE 1	2	3	4	5
Public(b)	12,000 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	--
Individual each lot(c)	1 acre	1.25 acres	1.5 acres	1.75 acres	--

SOIL TYPE	DRAINAGE	PERCOLATION RATE(d)(e)	APPROXIMATE SOIL CLASSIFICATION SYMBOL (USDA Soil Classification System)(e)(f)
1	Good	1-15	Sand, Loamy Sand
2	Fair	16-30	Sandy Loam, Loam
3	Poor	30-45	Loam, Silty Loam
4	Marginal	46-60	Sandy Clay Loam. Silty Clay Loam,(g).
5	Unacceptable	(h)	Clay Loam, Clay Bedrock, fractured bedrock, hardpan, (including unacceptable ground water table elevations)

FOOTNOTES

(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements shall not apply to building lots which have been recorded or have received final local health department approval prior to May 21, 1984. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded and other approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot must also be acceptable to the regulatory authority.

(b) This category shall also include lots served by a nonpublic water source that is not located on the lots.

(c) See the isolation requirements in Table 2.

(d) When deep wall trenches or seepage pits will be used, the percolation test may be estimated by a qualified person in accordance with R317-4-9.

(e) When there is a substantial discrepancy between the percolation rate and the approximate soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.

(f) See Table 10 for a more detailed description of the USDA soil classification system.

(g) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(h) Faster than one minute per inch, slower than 60 minutes per inch, or unsuitable soil formations.

B. Determination of minimum lot size by Methods 1 and 2 would not preempt local governments from establishing larger minimum lot sizes.

C. Available pertinent land for construction of other than single-family dwellings should have a minimum net available area in the amount of 22 square feet per gallon of estimated sewage computed from the fixture unit values established by Table 3 or other acceptable methods. Each fixture unit should be rated at not less than 25 gallons per day. One-half of this pertinent land area should be available for the absorption system.

4.3. Isolation of Onsite Wastewater Systems. Minimum distances between components of an onsite wastewater disposal system and pertinent ground features shall be as prescribed in Table 2.

TABLE 2
Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Building Sewer	to Septic Tank
Public Water Supply Sources		
Protected Aquifer Well (c)	100	100
Unprotected Aquifer Well (c)	(d)	(d)
Spring (c)	(d)	(d)
Individual or Nonpublic Water Supply Sources		
Grouted Well (k)	25	50
Ungrouted Well (k)	25	50
Spring (c)	25	50
Non-culinary Well or Spring	--	25
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	--	25
Lake, Pond, Reservoir	--	25
Culinary Water Supply Line	(g)	10
Foundation of any building including garages and outbuildings:		
without foundation drains	3	5
with foundation drains	3	25
Curtain drains		
located up gradient	--	10
located down gradient	10	25
Property line	5	5
Swimming pool wall (subsurface)	3	10
Downslope cut bank or top of embankment	--	10
Dry washes, gulches, and gullies	--	25
Catch basin or dry well	--	5
Trees and shrubs (h)	--	--
Deep Wall Trench (b)	--	5
Absorption Bed	--	5
Standard/Chamber Trench	--	5

Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Standard Trench	to Deep Wall Trench	to Absorption Bed
Public Water Supply Sources			
Protected Aquifer Well (c)	100	100	100
Unprotected Aquifer Well (c)	(d)	(d)	(d)
Spring (c)	(d)	(d)	(d)
Individual or Nonpublic Water Supply Sources			
Grouted Well (k)	100	100	100
Ungrouted Well (k)	200(e)	200(e)	200(e)
Spring (c)	200(e)	200(e)	200(e)
Non-culinary Well or Spring	100	100	100
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	100(f)	100(f)	100(f)
Lake, Pond, Reservoir	100	100	100
Culinary Water Supply Line	10(g)	10(g)	10(g)
Foundation of any building including garages and outbuildings:			
without foundation drains	5	20	5
with foundation drains	100	100	100
Curtain drains			
located up gradient	20	20	20

located down gradient	100	100	100
Property line	5	10	10
Swimming pool wall (subsurface)	25	25	25
Downslope cut bank or top of embankment	50	50	50
Dry washes, gulches, and gullies	50	50	50
Catch basin or dry well	25	25	25
Trees and shrubs (h)	5	5	5
Deep Wall Trench (b)	10	(i)	10
Absorption Bed	10	10	10
Standard Trench	(j)	10	10

FOOTNOTES

(a) All distances are from edge to edge and on the same property. Where surface waters are involved, the distance shall be measured from the high water line.

(b) Seepage pits shall meet the same separation distances specified for deep wall trenches, except that seepage pits shall be separated from one another by at least a distance equal to 3 times the greatest diameter of either pit, with a minimum separation of 15 feet.

(c) As defined by R309-113-6. Distances to avoid contamination cannot always be predicted for varying conditions of soil or underlying bedrock and ground water. Absorption systems should be located as far away from wells, springs, and other water supplies as is practicable, and not on a direct slope above them. Compliance with separation requirements does not guarantee acceptable water quality in every instance. This is particularly applicable with shallow sources of ground water. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.

(d) It is recommended that the listed concentrated sources of pollution be located at least 1500 feet or as required by the Drinking Water Source Protection rules, from unprotected aquifer wells and springs used as public water sources. Any proposal to locate closer than 1500 feet from the property line must be reviewed and approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an onsite wastewater system closer than 1500 feet to a public unprotected aquifer well or spring must submit a report to the regulatory authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the regulatory authority may be 100 feet. R309-113 requires a protective zone, established by the public water supply owner, before a new source is approved. Public water sources which existed prior to the requirement for a protective zone may not have acquired one. Such circumstances must be reviewed by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source.

(e) Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority which considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.

(f) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed, a reduction in the distance requirement may be justified, but each case must be decided on its own merits by the regulatory authority.

(g) If the water supply line is for a public water supply, the separation distance must comply with the requirements of R309. No water service line shall pass over any portion of an onsite wastewater system.

(h) Components which are not watertight should not extend into actual or anticipated root systems of nearby trees. Trees and other large rooted plants shall not be allowed to grow over onsite wastewater systems. However, it is desirable to cover the area over onsite wastewater systems with lawn grass or other shallow-rooted plants. Onsite wastewater systems should not be located under vegetable gardens.

(i) For deep wall trenches, the separation distance must be at least equal to 3 times the deepest effective depth of either trench with a minimum separation of 12 feet between trenches.

(j) See R317-4-9, Table 9.

(k) A grouted well is a well constructed as required in the drinking water rules R309.

4.4. Estimates of Wastewater Quantity. Quantity of wastewater to be disposed of shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the nondisposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Table 3 shall be used to make estimates of flow. In no event shall the septic tank or absorption system be designed such that the anticipated maximum daily sewage flow exceeds the capacity for which the system was designed.

TABLE 3
Estimated Quantity of Domestic Wastewater(a)

Type of Establishment	Gallons per day
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarders	10 per person
Bowling Alleys	
a. with snack bar	100 per alley
b. with no snack bar	85 per alley
Camps	
a. modern camp	30 per person
b. semi-developed with flush toilets	30 per person
c. semi-developed with no flush toilets	5 per person
Churches	
a. per person	5
Condominiums, Multiple Family Dwellings, or Apartments	
a. with individual or common laundry facilities	400 per unit
b. with no individual or common laundry facilities	75 per person
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Gyms	
a. participant	25 per person
b. spectator	4 per person
Hairdresser	
a. per chair	50
b. per operator	35
Highway Rest Stops (improved, with restroom facilities)	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings (exclusive of industrial waste)	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space

Office Buildings and Business Establishments (Sanitary wastes only, per shift)	
a. with cafeteria	25 per employee
b. with no cafeteria	15 per employee
Picnic Parks (toilet wastes only)	5 per person
Restaurants(b)	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Recreational Vehicle Parks	
a. sanitary stations for self-contained vehicles	50 per space
b. dependent spaces (temporary or transient with no sewer connections)	50 per space
c. independent spaces (temporary or transient with sewer connections)	125 per space
Rooming House	40 per person
Sanitary Stations (per self-contained vehicle)	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations(c) (per vehicle served)	10
Single-Family Dwellings	(See Tables 7, 10, and 13)
Skating Rink, Dance Halls, etc.	
a. no kitchen wastes	10 per person
b. additional for kitchen wastes	3 per person
Ski Areas	
a. no kitchen wastes	10 per person
b. Additional for kitchen wastes	3 per person
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses(d)	10 per person
Taverns, Bars, Cocktail Lounges	20 per seat
Visitor Centers	5 per visitor

FOOTNOTES

(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.

(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

(c) Or, 250 gallons per day per pump.

(d) Or, 20 x water area + deck area.

4.5. Installation in Sloping Ground.

A. Construction of absorption systems on slopes in excess of 15 percent but not greater than 25 percent may be allowed providing that subsoil profiles indicate no restrictive layers of soil and appropriate engineering design is provided. Absorption systems placed in sloping ground shall be so constructed that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. Where the addition of fluids is judged to create an unstable slope, absorption systems will be prohibited.

B. Absorption systems shall be so located and constructed that there is a minimum of 50 feet from downhill slopes that exceed 35 percent.

C. Alternative systems shall be subject to the site slope limits specified in R317-4-11 for earth fill, "at-grade" systems and in mound systems.

4.6. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100 percent replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

R317-4-5. Soil and Ground Water Requirements.

5.1. Soil Requirements.

A. In areas where onsite wastewater systems are to be constructed, soil cover must be adequate to insure at least 48 inches of suitable soil between bedrock formations or impervious strata and the bottom of the absorption system excavation. In cases where an approved fill is used, there shall be at least three feet of suitable soil from prevailing site grade to bedrock formations or impervious strata. For the purposes of this regulation, unsuitable soil or bedrock formations shall be deemed to be (1) soil or bedrock formations which are so slowly permeable that they prevent downward passage of effluent, or (2) soil or bedrock formations with open joints or solution channels which permit such rapid flow that effluent is not renovated. This includes coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable for absorption systems. Where a mound system is used, there shall be at least two feet of suitable soil from prevailing site grade to formations which will permit such rapid flow that effluent will not be renovated.

B. A suitable soil for absorption systems shall meet the following criteria:

1. The distance between the maximum ground water table and the bottom of the absorption system excavation complies with the requirements of these rules.

2. Has the capacity to adequately disperse the designed effluent loading as determined by field percolation rates, or by other approved soil tests.

3. Does not exhibit inhibiting swelling or collapsing characteristics.

4. Does not visually exhibit a jointed or fractured pattern of an underlying bedrock.

5. Is not consolidated, cemented, indurated, or plugged by a buildup of secondary deposited calcium carbonate (caliche).

6. Acts as an effective effluent filter within its depth for the removal of pathogenic organisms.

7. Criteria for alternative onsite wastewater systems, as specified in R317-4-11 for earth fill systems, "at-grade" systems, and mound systems.

5.2. Ground Water Requirements.

A. In areas where absorption systems are to be constructed, the elevation of the anticipated maximum ground water table shall be at least 24 inches below the bottom of the absorption system excavation and at least 48 inches below finished grade. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21,1984 shall be subject to the ground water table separation

requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the ground water table separation requirements of this regulation if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

B. The maximum ground water table shall be determined by one or more of the following methods:

1. Direct visual observation of the maximum ground water table in a soil exploration pit.

2. Regular monitoring of the "ground water table" or "ground water table, perched" in an observation well for a period of one year, or for the period of maximum ground water table. Ground water monitoring shall be required where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system, or where alternative onsite wastewater systems may be considered.

3. Observation of soil in a soil exploration pit for evidence of crystals of salt left by the maximum ground water table; or chemically reduced iron in the soil, reflected by a mottled coloring.

C. If the highest elevation that the top of the ground water table or ground water table, perched, ever recorded, is expected to reach for any reason, including irrigation induced water table, over the full operating life of the conventional onsite wastewater system is within 24 inches of the bottom of the conventional onsite wastewater system the use of conventional onsite wastewater systems in the area of study will be prohibited.

D. Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

E. A curtain drain or other effective ground water interceptor may be required to be installed for an absorption system as a condition for its approval. The health authority may require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

5.3. Soil Exploration Requirements.

A. Suitable soil exploration pits, of sufficient size to permit visual inspection, and to a minimum depth of ten feet, or at least 48 inches below the bottom of proposed onsite wastewater systems, shall be dug on each absorption system site to determine the ground water table and subsurface soil and bedrock conditions. One end of each pit should be sloped gently to permit easy entry if necessary. A log of the soil and bedrock formations encountered must be submitted describing the texture, structure, and depth of each soil type, the depth of the ground water table encountered, and indications of the maximum elevation of the ground water table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System by qualified individuals.

B. Proper safety precautions shall be taken whenever soil exploration pits or other excavations are dug for onsite wastewater systems.

5.4. Percolation Test Requirements. At least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, shall be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, where the proposed property improvements will require large disposal systems, or where the health authority deems it necessary. Percolation tests shall be conducted in accordance with the instructions in this section. Absorption systems are not permitted in areas where the soil percolation rate is slower than 60 minutes per inch or faster than one minute per inch.

A. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for onsite wastewater systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the regulatory authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent. Copies of the recommended Percolation Test Certificate form can be obtained from the Division of Water Quality. The test certificate must contain the following:

1. a signed statement certifying that the tests were conducted in accordance with this rule;

2. The name of the individual conducting the tests;

3. The location of the property

4. the depth and rate of each test in minutes per inch;

5. the date of the tests;

6. the logs of the soil exploration pits, including a statement of soil explorations to a depth of ten feet. In the event that absorption systems will be deeper than six feet, soil explorations must extend to a depth of at least four feet below the bottom of the proposed absorption system including, deep wall trench, seepage pit or absorption bed;

7. a statement of the present and anticipated maximum ground water table;

8. all other factors affecting percolation test results.

C. Percolation tests shall be conducted at the owner's expense by or under the supervision of a qualified person such

as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, in accordance with the following:

1. Conditions Prohibited for Test Holes. Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests. Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Number and Location of Percolation Tests. One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present. Percolation tests conducted for deep wall trenches and seepage pits shall comply with R317-4-9. Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the regulatory authority and may be accepted only if conducted with an authorized representative present.

4. Test Holes to Commence in Specially Prepared Excavations. All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately six inches above the strata to be tested.

5. Type, Depth, and Dimensions of Test Holes. Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from four to 18 inches (preferably eight to twelve inches). The vertical sides shall be at least twelve inches deep, terminating in the soil at an elevation six inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

6. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument, in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Remove all loose soil from the bottom of the hole. Add two to three inches of clean coarse sand gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

7. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

8. Placing Water in Test Holes. Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

9. Percolation Rate Measurement, General. Necessary equipment should consist of a tape measure (with at least 1/16-inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

10. Test Procedure for Sandy or Granular Soils. For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of twelve inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least twelve inches above the gravel seeps away in ten minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than six inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at ten minute intervals for a period of one hour.

c. If six inches of water seeps away in less than ten minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed six inches.

d. The final water level drop shall be used to calculate the percolation rate.

11. Test Procedure for Other Soils Not Meeting the Above Requirements. The hole shall be carefully filled with clear water and a minimum depth of twelve inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil which has sloughed into the hole shall be removed and water shall be adjusted to six inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

c. The hole shall be filled with clear water to a point not more than six inches above the gravel whenever it becomes nearly empty.

d. Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

e. When the first six inches of water seeps away in less than 30 minutes, the time interval between measurements shall be ten minutes, and the test run for one hour.

f. The water depth shall not exceed six inches at any time during the measurement period.

g. The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

12. Calculation of Percolation Rate. The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

13. Using Percolation Rate to Determine Absorption Area. The minimum or slowest percolation rate shall be used in calculating the required absorption area.

R317-4-6. Building Sewer and Distribution Pipe.

6.1. General Requirements. Pipe, pipe fittings, and similar materials comprising building sewers shall comply with the following:

A. They shall be composed of plastic, or other suitable material approved by the Division, and shall conform to the applicable standards as outlined in Tables in this section.

B. The following is a list of solid-wall pipe that has been approved for building sewers.

C. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 4

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	(d) ASTM D-2680 ASTM D-2751 (c) (pressure)
B. Polyvinyl Chloride (PVC) PVC-DWV Schedule 40	ASTM D-2665
PVC - Sewer	ASTM D-3033 ASTM D-3034 (pressure) ASTM F-789

D. The following is a list of solid-wall perforated pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with R317-4-6, and all burrs must be removed from the inside of the pipe. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 5

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM D-2661 ASTM D-2751
B. Polyethylene, Smooth Wall (PE)	ASTM D-1248 ASTM D-3350
C. Polyvinyl Chloride (PVC) Schedule 40	(e) ASTM D-2729 ASTM D-2665 (pressure) ASTM D-3033 ASTM D-3034 (pressure)

FOOTNOTES

(a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the International Plumbing Code.

(b) Building sewers include (1) the pipe installed between the building and the septic tank and (2) between the septic tank and the distribution box (or absorption system). The installation of building sewers shall comply with the International Plumbing Code.

(c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(d) For domestic sewage only, free from industrial wastes.

(e) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for building sewer application.

E. Where two different sizes or types of sewer pipes are connected, a proper type of fitting or conversion adapter shall be used.

F. They shall have a minimum inside diameter of four inches. They shall have watertight, root-proof joints and shall not receive any ground water or surface runoff. They shall be laid in straight alignment and on a firm foundation of undisturbed earth or acceptably stabilized earth that is not subject to settling.

G. Building sewers shall be laid on a uniform minimum slope of not less than 1/4-inch per foot (2.08 percent slope). When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4-inch per foot, a building sewer of four inches in diameter or larger may have a slope of not less than 1/8-inch per foot (1.04 percent slope) when approved by the regulatory authority.

H. The lines shall have cleanouts every 100 feet and at all changes in direction or grade, except where manholes are installed every 400 feet and at every change in direction or grade. On four-inch and six-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree ells are not recommended.

I. Building sewers shall be separated from water service pipes in separate trenches and by at least ten feet horizontally except that they may be placed in the same trench when the following three conditions are met:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench.

3. The number of joints in the service pipe shall be kept to a minimum, and the materials and joints of both the sewer and water service pipe shall be of a strength and durability to prevent leakage under adverse conditions.

J. If the water service pipe must cross the building sewer, it shall be at least 18 inches above the latter within ten feet of the crossing. Joints in water service pipes should be located at least ten feet from such crossings.

6.2. Ejector Pumps, Effluent Lift Pumps, and Pump Wells.

A. Ejector pumps discharging into septic tanks shall comply with the International Plumbing Code.

B. When septic tank effluent lift pumps and pump wells are part of an onsite wastewater disposal system, they shall comply with the following:

1. Pumps shall be so placed as to be self-priming, and should operate under positive suction head at all times. A quick disconnect for pumps, such as a union, should be provided between the pump and the line leading to the absorption system. Pumps shall be adequately housed to protect the pump motors from bad weather and protection shall be given to prevent freezing in any portion of the unit. Except for single-family dwellings, pumps shall be installed in duplicate with either pump having adequate capacity to handle maximum flow.

2. Minimum capacity shall be 10 gallons per minute at the necessary discharge head. Pumps shall be capable of passing a 3/4-inch solid sphere and shall have a minimum 2-inch discharge. Suitable shutoff valves shall be placed on suction and discharge lines of each pump and a check valve shall be placed on each discharge line between the shutoff valve and the pump.

3. The pressure line shall be constructed of piping material of a bursting pressure of at least 100 psi and shall be of

approved corrosion-resistant material. The pressure line shall be bedded in 3 inches of sand or pea gravel. Pumps may be oil filled submersible pumps or vertically-mounted column pumps. Impellers shall be of cast iron, bronze or other corrosion-resistant material. Level control shall be by a float switch or by other acceptable methods. The pump well shall be constructed of corrosion-resistant material of sufficient strength to withstand the soil pressures related to the depth of the sump, and shall be adequately protected against surface flooding. Capacity of the pump well shall not be less than 50 gallons, and shall be sized to provide between 3 and six pumping cycles per day. Pump wells shall have adequate ventilation and shall be provided with a maintenance access manhole at the ground surface or above and of at least 24-inch diameter with a durable locking-type cover.

4. Power supply should be available from at least 2 independent generating sources, or emergency power equipment should be provided. Where power failure may result in objectionable conditions or unauthorized waste discharge, means for emergency operation shall be provided.

5. Electrical systems and components (i.e. motors, lights, cables, conduits, switch boxes, control circuits, etc.) in sewage pump wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class I, Group D, Division I locations. In addition, equipment located in the pump well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with a watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided in all pumping stations.

R317-4-7. Septic Tanks.

7.1. General Requirements.

A. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces, to provide settling of solids, accumulation of sludge and scum, and be accessible for inspection and cleaning as specified in the following paragraphs:

B. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality.

7.2. Overall Construction and Design Features.

A. Septic tanks may be constructed of the following:

1. Precast reinforced concrete
2. Fiberglass
3. Polyethylene
4. Poured-in-place concrete
5. Material approved by the Division

B. Septic tanks may have single or multiple compartments and may be oval, circular, rectangular, or square in plan, provided the distance between the inlet and outlet of the tank is at least equal to the liquid depth of the tank. In general, the tank length should be at least two to three times the tank width.

C. All septic tanks may have an effluent filter installed at the outlet of the tank. The filter shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The filter should be easily removed for routine servicing through watertight access from the ground surface, or be bypassed with a piping arrangement.

7.3. Plans for Tanks Required.

A. Plans for all septic tanks shall be submitted to the regulatory authority for approval. Such plans shall show all dimensions, capacities, reinforcing, and such other pertinent data as may be required. All septic tanks shall conform to the design drawings and all building shall be done under strict controlled supervision by the manufacturer.

B. Commercial septic tank manufacturers shall submit design plans for each tank model manufactured to the Division for review and approval. The manufacturer shall certify in writing to the Division that the septic tanks to be distributed for use in the State of Utah will comply with this regulation. It is recommended that such plans also be evaluated by a registered engineer as to surcharge, impact load, and deadload. Any changes in the design of commercially manufactured septic tanks shall be submitted to the Division for approval.

7.4. Tank Capacity for Single-Family Dwellings. The minimum liquid capacity of septic tanks serving single-family dwellings shall be based on the number of bedrooms in each dwelling, in accordance with Table 6.

TABLE 6
Minimum Capacities for Septic Tanks(a)

Number of Bedrooms(b)	Minimum Liquid Capacity(c)(d) (Gallons)
1	750
2 or 3	1000
4	1250
For each additional bedroom, add	250

FOOTNOTES

(a) Tanks larger than the minimum required capacity are generally more economical since they do not have to be cleaned as often.

(b) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

(c) The liquid capacity is calculated on the depth from the invert of the outlet pipe to the inside bottom of the tank. A variance of three percent in the required volume may be allowed.

(d) Table 6 provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

7.5. Tank Capacity for Commercial, Institutional, and Recreational Facilities, and Multiple Dwellings.

A. The minimum liquid capacity of septic tanks serving commercial, institutional, and recreational facilities, and multiple dwellings shall be determined on the following basis:

1. For wastewater flows up to 500 gallons per day, the liquid capacity of the tank shall be at least 750 gallons.

2. For wastewater flows between 500 and 1,500 gallons per day, the liquid capacity of the tank shall be at least 1.5 times the 24-hour estimated sewage flow (see Table 3).

3. For wastewater flows between 1,500 and 5,000 gallons per day, the liquid capacity of the tank shall equal at least 1,125 gallons plus 75 percent of the daily wastewater flow ($V = 1,125 + 0.75Q$ where V = liquid volume of the tank in gallons, and Q = wastewater discharge in gallons per day).

B. In cases where dwellings or facilities are subject to high

peak sewage flows, the liquid capacity of the onsite wastewater system shall be increased as required by the regulatory authority.

7.6. Precast Reinforced Concrete Septic Tanks.

A. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness. The top shall have a minimum thickness of four inches. Such tanks shall have reinforcing of at least six inch x six inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the Division based on an evaluation of acceptable structural engineering data submitted by the manufacturer. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to assure reasonable watertightness. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight. Excessively mortared joints should be trimmed flush. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

B. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply to best acceptable methods as outlined in "Curing Concrete, ACI308-71," by American Concrete Institute, P.O. Box 19150, Detroit, Michigan 84219.

7.7. Fiberglass Septic Tanks.

A. Fiberglass septic tanks shall comply with the criteria for acceptance established in the "Interim Guide Criteria For Glass-Fiber-Reinforced Polyester Septic Tanks", International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032. The identifying seal of the International Association of Plumbing and Mechanical Officials must be permanently embossed in the fiberglass as evidence of compliance. The design requirements in R317-4-7 shall also be met. Other required identity marks must also comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the following installation procedures shall apply:

1. During installation, careful handling of the tank is necessary to prevent damage. Tanks shall not be installed under areas subject to vehicular traffic or heavy equipment.

2. There shall be a minimum of twelve inches of approved, compacted backfill material under the tank as a resting bed. The resting bed must be smooth and level.

3. The hole that the tank is to be installed in shall be large enough to allow a minimum of twelve inches from the ends and sides of the tank to the hole wall.

4. Approved backfill material shall be a naturally-rounded aggregate, clean and free flowing, with a particle size of 3/8-inch or less in diameter. Crushed stone or gravel of the same particle size may be used if naturally-rounded aggregate is not available, but should be washed and free flowing.

5. Backfilling shall be accomplished to the top of the tank in twelve -inch lifts with each layer being well compacted. Sharp tools should not be used near the septic tank. With the manhole cover(s) in place, water should be added to the tank during backfilling. The water level in the tank should coincide approximately with the backfill depth. With the tank full of water, the excavation should be brought to grade with the same approved backfill materials. Depth of backfill over the top of the tank shall not exceed 2-1/2 feet.

7.8. Polyethylene Septic Tanks.

A. Polyethylene septic tanks shall comply with the criteria for acceptance established in "Prefabricated Septic Tanks and Sewage Holding Tanks, Can3-B66-M79" by the Canadian Standards Association, 178 Rexdale Boulevard, Rexdale, Ontario, Canada M9W1R3. Required identifying marks shall comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the installation procedures in R317-4-7 shall apply.

7.9. Poured-In-Place Concrete Septic Tanks. The top of poured-in-place septic tanks with a liquid capacity of 750 to 1,250 gallons shall be a minimum of four inches thick, and reinforced with one 3/8-inch reinforcing rod per foot of length, or equivalent. The top of tanks with a liquid capacity of greater than 1,250 gallons up to the maximum design capacity shall be a minimum of six inches thick, and reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. The walls and floor shall be a minimum of six inches thick. The walls shall be reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured. A six-inch water stop shall be used at the wall-floor juncture to insure watertightness. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to insure watertightness. Curing of concrete shall comply with the requirements in R317-4-7.

7.10. Identifying Marks. All prefabricated or precast septic tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the outlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons. Both the inlet and outlet of all such tanks shall be plainly marked as IN or OUT, respectively.

7.11. Liquid Depth of Tanks. Liquid depth of septic tanks shall be at least 30 inches. Depth in excess of 72 inches shall not be considered in calculating liquid volume required in R317-4-7.

7.12. Tank Compartments. Septic tanks may be divided into compartments provided each meets applicable requirements stated herein as well as the following:

A. The volume of the first compartment must equal or exceed two thirds of the total required septic tank volume.

B. No compartment shall have an inside horizontal

distance less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is four inches, the cross-sectional area is not less than that of a six -inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40 percent of the liquid depth of the tank.

D. No tank shall have an excess of three compartments.

7.13. Tanks in Series. Additional septic tank capacity over 750 gallons may be obtained by joining uncompartmented tanks in series to obtain the required capacity providing the following are complied with:

A. No tank in the series shall be smaller than 750 gallons.

B. The capacity of the first tank shall be at least two thirds of the required total septic tank volume.

C. The outlet of each successive tank shall be at least 2 inches lower than the outlet of the preceding tank, and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

D. The number of tanks in series shall not exceed three.

7.14. Inlets and Outlets. Inlets and outlets of tanks or compartments thereof shall meet the material and minimum diameter requirements for building sewers and shall be tee-ed or baffled with the object of diverting incoming flow toward the tank bottom and minimizing as much as possible the discharge of sludge or scum in the effluent. Inlet or outlet devices shall also conform with the following:

A. Inlets and outlets should be located on opposite ends of the tank. The invert of flow line of the inlet shall be located at least two inches (and preferably three inches) above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

B. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming sewage downward. This baffle or tee is to penetrate at least six inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

C. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to approximately 40 percent of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35 percent of the liquid depth.

D. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

E. All inlet and outlet devices shall be permanently fastened in a vertical, rigid position. Inlet and outlet pipe connections to the septic tank shall be sealed with a bonding compound that will adhere to the tank and pipes to form watertight connections, or watertight sealing rings.

F. Inlet and outlet devices shall not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees must extend at least six inches above the liquid level in order to provide scum storage, but no closer than one inch to the inside top of the tank.

G. Offset inlets may be approved by the regulatory authority where they are warranted by constraints on septic tank location.

H. Multiple outlets from septic tanks shall be prohibited.

I. A gas deflector may be added at the outlet of the tank to prevent solids from entering the outlet pipe of the tank.

7.15. Scum Storage. Scum storage volume shall consist of 15 percent or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

7.16. Accessibility of Tank. Septic tanks shall be installed in a location so as to be accessible for servicing and cleaning, and shall have no structure or other obstruction placed over them so as to interfere with such operations. Tanks should be placed between the dwelling and the street whenever possible to facilitate connection to the sanitary sewer at the time such a sewer is installed.

7.17. Access to Tank Interior. Adequate access to the tank shall be provided to facilitate inspection and cleaning and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches, preferably 22 inches, in minimum horizontal dimension or by means of an easily removable lid section.

B. Access to inlet and outlet devices shall be provided through properly spaced openings not less than twelve (12) inches in minimum horizontal dimension or by means of an easily removable lid section.

C. The top of the tank shall be at least six inches below finished grade.

D. All manholes required by R317-4-7. shall be extended to within at least four inches of the finished grade. The manhole extensions shall be constructed of durable, structurally sound materials which are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

E. Access covers for manhole openings shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

F. No septic tank shall be located under paving unless extensions to the access openings are extended up through the paving and the manholes are equipped with a locking-type cover.

7.18. Tank Cover. Septic tank covers shall be sufficiently strong to support whatever load may reasonably be expected to be imposed upon them and tight enough to prevent the entrance of surface water, dirt, or other foreign matter, and seal the odorous gases of digestion.

7.19. Tank Excavation and Backfill. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole should be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed

in such a manner as to prevent undue strain or damage to the tank or connected pipes.

7.20. Installation in Ground Water. If septic tanks are installed in ground water, the regulatory authority may require adequate ground anchoring devices to be installed to prevent the tank from floating when it is emptied during cleaning operations.

7.21. Maintenance Requirements. Maintenance Requirements - Adequate maintenance shall be provided for septic tanks to insure their proper function. Recommendations for the inspection and cleaning of septic tanks are provided in R317-4-13.

R317-4-8. Discharge to Absorption Systems.

8.1. General Requirements. Septic tank effluent shall be conducted to the absorption system through a watertight pipe and fittings which meet the material, diameter, and slope requirements for building sewers. Tees, wyes, ells, or other distributing devices may be used as needed. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.2. Tees and Wyes. Tees and wyes shall be installed level to permit equal flow to the branches of the fitting.

8.3. Drop Boxes. On level or sloping topography, drop boxes may be used to distribute effluent within the absorption system. They are usually installed in the middle or at the head end of each trench. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box (except for the last drop box), and l or 2 distribution pipes leading to the absorption system. Drop boxes shall meet the following requirements:

A. The inlet pipe to the drop box shall be at least one inch higher than the outlet pipe leading to the next drop box.

B. The invert of the distribution pipes(s) shall be four to six inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation. Drop boxes shall be installed level and the flow from multiple distribution lines should be checked by filling the drop box with water up to the outlets.

C. The inlet and outlet of the drop box shall be sealed watertight to the sidewalls of the drop box.

D. The drop box shall be provided with a means of access. The top of the drop box shall have a lid of compatible construction and material as the drop box, and be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system. The top of the drop box shall be at least six inches below finished grade.

E. The drop box must be installed on a level, solid foundation to insure against tilting or settling. To minimize frost action and reduce the possibility of movement once installed, drop boxes should be set on a bed of sand or pea gravel at least 12 inches thick.

F. Unused "knock-out" holes in concrete drop boxes shall be completely filled with concrete or mortar.

8.4. Distribution Boxes. Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate 1 inlet pipe, the necessary distribution lines, and shall meet the same requirements as for drop boxes, except that outlet inverts of the distribution box shall be not less than 2 inches below the inlet invert. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.5. Identifying Marks. Commercially manufactured drop boxes and distribution boxes shall be plainly and legibly marked on an interior wall above the level of the top of the inlet pipe with the name of the manufacturer.

R317-4-9. Absorption Systems.

9.1. General Requirements.

A. Distribution pipe for gravity-flow absorption systems shall be four inches in diameter and shall be perforated. Distribution pipe and pipe fittings shall be of approved materials capable of withstanding corrosive action by sewage and sewage-generated gases, and meeting recognized national standards for compressive strength and corrosive action such as standards published by the American Society for Testing Materials (see R317-4-6).

B. Distribution pipe for gravity-flow absorption systems shall be in straight lengths and penetrated by at least two rows of round holes, each 1/4 to 1/2-inch in diameter, and located at approximately six -inch intervals. When installed on a level or nearly level grade, the perforations should be located at about the five o'clock and seven o'clock positions on the pipe to permit nearly equal drainage along the length of pipe, and the open ends of the pipes shall be capped.

C. Absorption system laterals designed to receive equal flows of wastewater shall have approximately the same absorption area. Many different designs may be used in laying out absorption systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the disposal area.

D. In gravity-flow absorption systems with multiple distribution lines, the sewer pipe from the septic tank shall not be in direct line with any one of the distribution lines, except where drop boxes or distribution boxes are used.

E. Any section of distribution pipe laid with non-perforated pipe, shall not be considered in determining the required absorption area.

F. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris. If it is necessary to walk in the excavation, a temporary board laid on the bottom will prevent damage from excessive compaction. Some smearing damage is likely to occur. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

G. The distribution pipe shall be bedded true to line and

grade, uniformly and continuously supported on firm, stable material.

H. The top of the stone or "gravel" filter material shall be covered with an effective, pervious, material such as an acceptable synthetic filter fabric, unbacked fiberglass building insulation, a two-inch layer of compacted straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the filter material.

I. Absorption systems shall be backfilled with earth that is free from stones ten inches or more in diameter. The first four to six inches of soil backfill should be hand-filled. Distribution pipes shall not be crushed or disaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

J. Heavy equipment shall not be driven in or over absorption systems during construction or backfilling.

K. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area, except that deep wall trenches and seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least three feet below the final ground surface.

L. That portion of absorption systems below the top of distribution pipes shall be in natural earth or in earth fill which meets the requirements of R317-4-5.

M. A diversion valve may be installed in the sewer line after the septic tank to allow the use of rotating absorption systems. Such duplicate systems may be allowed in lieu of replacement areas. Total onsite wastewater system requirements shall remain the same. The valve shall be accessible from the finished grade. The valve should be switched annually.

N. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.2. Standard Trenches. Standard trenches consisting of a series of trenches designed to distribute septic tank effluent into perforated pipe and gravel fill, from which it percolates through the trench walls and bottoms into the surrounding subsurface soil, shall conform to the following requirements:

A. The effective absorption area of standard trenches shall be considered as the total bottom area of the excavated trench system in square feet.

B. The minimum required effective absorption area for standard trenches shall be determined from Table 7 by using the results of percolation tests conducted in accordance with R317-4-5. The minimum required effective absorptive area of trenches which utilize chamber systems shall be in accordance with R317-4-9.

C. Isolation of standard trenches shall be not less than the minimum distances specified in Table 2.

D. Design and construction of standard trenches shall be as specified in Tables 8 and 9.

TABLE 7

Subsurface Absorption Systems
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates)(a)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (b)(c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per sq. feet per day (e)(f)(g)
1-10	165	1.6
11-15	190	1.3
16-20	212	1.1
21-30	250	0.9
31-45	300	0.8
46-60(g)	330	0.6

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 7 provide for normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least 2 bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Soil absorption systems are not permitted in areas where the soil percolation rate is slower than one inch in 60 minutes or faster than one inch in one minute.

TABLE 8
Absorption Trench Construction Details(a)

ITEM	UNIT	MINIMUM	MAXIMUM
GRAVITY EFFLUENT DISTRIBUTION PIPES:			
Number of laterals	--	2(b)	--
Length of individual laterals	feet	--	100(c)
Diameter	inches	4	--
Width of trenches	inches	12	36
Slope of distribution pipe	inches/100 ft.	(d)	4
Depth to trench bottom (from ground surface)	inches	10	(e)
Distance between trenches		(see R317-4-9, Table 9)	
Bottom of trench to maximum ground water table	inches	24	--
Bottom of trench to unsuitable soil or bedrock formations	inches	48	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines:			
1/2 inch mesh(a) (12.5 millimeter)	percent	0	5
#10 mesh(a) (2.0 millimeter)	percent	0	2
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			

Under distribution pipe	inches	6(f)	--
Over distribution pipe	inches	2	--
Total depth	inches	12	--
Under pipe located within 10 feet of trees and shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6(g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the trenches in square feet.

(b) Of near equal length.

(c) Preferably not more than 60 feet long.

(d) Preferably level.

(e) Trenches should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.

(f) Preferably 8 inches.

(g) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

TABLE 9
Width and Minimum Spacing Requirements
for Absorption Trenches

Width at Bottom in Inches	Minimum Spacing of Trenches (wall to wall) in Feet
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

E. The stone or "gravel" fill used in absorption trenches shall consist of crushed stone, gravel, or similar material, ranging from 3/4 to 2 1/2 inches in diameter. It shall be free from fines, dust, sand, or organic material and shall be durable, and resistant to slaking and dissolution. The maximum fines in the gravel shall be two percent by weight passing through a US Standard #10 mesh (two millimeter) sieve. It shall extend the full width of the trench, shall be not less than six inches deep beneath the bottom of the distribution pipes, and shall completely encase and extend at least 2 inches above the top of the distribution pipe.

F. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

G. In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be interconnected to produce a closed-loop or continuous system and the distribution pipes should be level.

H. In locations where the ground over the absorption system area slopes greater than six inches in any direction within field area, a system of serial distribution trenches may be used which will follow approximately the ground surface contours so that variation in trench depth will be minimized. The trenches should be installed at different elevations, but the bottom of each individual trench should be level throughout its length.

I. Serial trenches shall be connected with a drop box (R317-4-8)or watertight overflow line (R317-4-9) in such a manner that a trench will be filled with wastewater to the depth of the gravel fill before the wastewater flows to the next lower trench.

J. The overflow line between serial trenches shall be a four-inch watertight pipe with direct connections to distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to insure a block of undisturbed earth between trenches. Backfill should be carefully tamped. Inlets should be placed as far as practical from overflows in the same trench.

9.3. Shallow Trenches with Capping Fill. Shallow trenches with capping fill are trenches which meet the requirements of standard trenches except for depth of installation. Shallow trenches with capping fill may be installed to a minimum depth of 10 inches from the natural existing grade to the bottom of the trench. The top of the distribution pipe shall not be installed above the natural existing grade. The gravel fill above the pipe, the filter media barrier, and the soil fill are installed as a "cap" to the trench above grade. Fill shall be installed between trenches to prevent surface ponding and to provide a level finished grade.

9.4. Chambered Trench Systems.

A. At the option of the local health department, chamber system media may be used in lieu of the gravel fill and perforated distribution pipe in absorption trenches if the installation is in conformance with manufacturer recommendations, as modified by these rules.

B. No cracked, weakened or otherwise damaged chamber units shall be used in any installation.

C. All chambers shall be manufactured of an approved material and shall be certified to withstand the AASHTO H-10-44 highway structural rating without damage or permanent deformation.

1. Type A Chamber Media:

a. Type A Chamber Media shall be of an approved design with a minimum width at the bottom of 30 inches (76 cm) and a minimum louvered sidewall opening height of six inches (15 cm).

b. Type A chamber media may be installed in standard trenches, shallow trenches with capping fill, at-grade trenches, and earth-fill trenches.

c. Type A chamber media shall be installed in trenches with a minimum excavation width of 36 inches (91 cm).

d. The minimum total length of Type A chamber media installed shall be equal or greater than the minimum length of a 36 inch wide gravel media trench as required by these rules.

2. Type B Chamber Media:

a. Type B Chamber Media shall be of an approved design with a minimum open bottom width of 18 inches (46 cm) and a minimum louvered sidewall opening height of 9-3/8 inches (24 cm).

b. The local health department shall provide written notification to the owner that they are using technology which has less experience than the conventional gravel filled trench. The potential liabilities of the system shall be clearly explained, including the responsibility a homeowner has to replace a failing wastewater system.

c. Type B chamber media may only be installed in standard trenches and shallow trenches with capping fill. Type B chambers may not be installed in conjunction with any other absorption system configuration, including alternative and experimental systems.

d. Type B chamber media shall be installed in trenches

with a minimum excavation width of 24 inches (61 cm).

e. The bottom of the Type B chamber media and trench excavation shall be a minimum of 9-3/8 inches below the bottom invert of the effluent inlet pipe to the trench.

f. The minimum total length of Type B chamber media installed shall be equal or greater than the minimum length of a 36 inch (91 cm) wide gravel media trench as required by these rules.

9.5. Deep Wall Trenches.

A. Deep wall trenches may be constructed in lieu of other approved absorption systems or as a supplement to an absorption trench where soil conditions and the required separation from the maximum ground water table comply with Table 11 of this section. This absorption system consists of deep trenches filled with clean, coarse filter material which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the following requirements:

1. The effective absorption areas shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the inlet or distributing pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious strata or bedrock formations shall not be considered in determining the effective sidewall absorption area. Each deep wall trench shall have a minimum sidewall absorption depth of 2 feet of suitable soil formation.

2. The minimum required sidewall absorption area shall be determined by either of the following 2 methods:

a. For the purpose of estimating the percolation test rate of each deep wall trench system, a signed " Deep Wall Trench Certificate" or equivalent shall be submitted as evidence that a proper percolation test has been performed under the supervision of a licensed environmental health scientist, registered engineer, or other qualified person certified by the regulatory authority. The deep wall trench certificate or equivalent must contain the following:

i. the name and address of the individual constructing the deep wall trench;

ii. the location of the property;

iii. the dimensions of the trench;

iv. total effective absorption depth;

v. a description of the texture, character, and thickness of each stratum of soil encountered in the deep wall trench construction;

vi. a signed statement certifying that the deep wall trench has been constructed in accordance with the requirements of this rule. The required absorption area shall then be determined in accordance with Table 10.

b. Percolation tests conducted in accordance with R317-4-5 shall be made in each soil horizon penetrated by the deep wall trench below the inlet pipe, and test results within the acceptable range specified in R317-4-5 shall be used in calculating the required sidewall absorption area in accordance with Table 7.

TABLE 10
Deep Wall Trench
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater (a)
(Based on Soil Descriptions According to the
United States Department of Agriculture (USDA)
Soil Classification System)

Character of Soil by USDA Soil Classification System	Residential Sq. Ft. of Sidewall Area Required Per Bedroom (b)(c)(d)	Commercial, Institutional, etc. Maximum Rate of Application in Gallons Per Sq. Ft. Sidewall Per Day (e)(f)
Hardpan or bedrock (including fractured bedrock with little or no fines).	(g)	(g)
Sand Well graded gravels, gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Sand Poorly graded gravels or gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Loamy Sand Well graded sands, gravelly sand, little or no fines.	195	1.20
Loamy Sand Poorly graded sands or gravelly sands, little or no fines.	195	1.20
Loam Silty sand, sand-silt mixtures.	295	0.8
Sandy Loam Silty gravels, poorly graded gravel-sand-silt mixtures.	235	1.0
Silty Loam Clayey gravels, gravel-sand-clay mixtures.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Clayey sands, sand-clay mixtures.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	520 (h)(i)	0.45 (h)(i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay Silty Clay Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	520 (h)(i)	0.45 (h)(i)
Clay Loam, Clay Inorganic clays of high plasticity, fat clays.	(g)	(g)
Clay Loam, Clay Organic silts and organic silty clays of low plasticity.	(g)	(g)
Clay Loam, Clay Organic clays of medium to high plasticity, organic silts.	(g)	(g)
Clay Loam, Clay Peat and other highly organic silts.	(g)	(g)

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum

figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 10 provide for normal household applications, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedroom times the required absorption area within the applicable soils description category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable soils description category. In every case, a minimum of 150 sq. ft. of sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 5 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Unsuitable for absorption area.

(h) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(i) For the purposes of this table, whenever there are reasonable doubts regarding the suitability and estimated absorption capacities of soils, percolation tests shall be conducted in those soils in accordance with R317-4-5. Soils within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soil categories, Clay loam and Clay soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

3. Isolation of deep wall trenches shall be not less than the minimum distances specified in Table 2.

4. Design and construction of deep wall trenches shall be as specified in Table 11.

5. The bottom of the deep wall trench shall terminate at least two feet above the maximum ground water table in the disposal area. Suitable soil conditions must be verified to a depth of four feet below the bottom of the proposed deep wall trench.

6. All deep wall trenches shall be filled with coarse stone that ranges from 3/4 to twelve inches in diameter and is free from fines, sand, clay, or organic material.

7. The distribution pipe shall be centered in the deep wall trench and placed the entire length of the trench. A thin layer of crushed rock or gravel ranging from 3/4 to 2 1/2 inches in diameter and free from fines, sand, clay or organic material, shall cover the coarse stone to permit leveling of the distribution pipe. The maximum fines in the gravel used above the stone shall be two percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. The crushed rock or gravel shall completely fill the trench to a minimum depth of two inches over the distribution pipe and shall be properly covered in accordance with R317-4-9 to prevent infiltration of backfill. A minimum of six inches of backfill shall cover the crushed rock or gravel over the distribution pipe.

TABLE 11
Deep Wall Trench Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
DEEP WALL TRENCHES:			
Width	feet	2	--
Length	feet	--	100 (b)
EFFECTIVE VERTICAL SIDEWALL ABSORPTION DEPTH (per trench)	feet	2	--
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Slope	inches/100 ft. (c)		4
BOTTOM OF TRENCH TO MAXIMUM GROUND WATER TABLE	inches	24	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	inches	48	--
DISTANCE BETWEEN DEEP WALL TRENCHES	(See Table 2)		
SIZE OF FILTER MATERIAL	inches	3/4	12
DEPTH OF FILTER MATERIAL:			
Under pipe	feet	2 (d)	--
Over pipe	inches	2	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (e)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably not more than 60 feet long.

(c) Preferably level.

(d) For a deep wall trench, the entire trench shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(e) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

8. If multiple deep wall trenches are installed in areas where the slope of the ground is relatively flat, the trenches and distribution pipes should be interconnected to produce a continuous system and the distribution pipe and trench bottoms should be level.

9. In locations where the ground over the deep wall trench area slopes, a single trench system should follow the contours of the land. If multiple trenches are necessary on sloping land, a system of serial deep wall trenches should be used, with each trench installed at a different elevation. The bottom of each trench should be level throughout its length.

10. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.6. Seepage Pits. Seepage pits shall be considered as modified deep wall trenches and may be constructed in lieu of other approved absorption systems or as a supplement to an absorption trench where soil conditions and the required separation from the maximum ground water table comply with R317-4-5. This absorption system consists of one or more deep pits, either (1) hollow-lined, or (2) filled with clean, coarse filter material, which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the general requirements for deep wall trenches, except for the following:

A. The effective absorption area for seepage pits shall be determined as for deep wall trenches in R317-4-9, except that each seepage pit shall have a minimum effective sidewall absorption depth of four feet of suitable soil formation.

B. The minimum required sidewall absorption area shall be determined as for deep wall trenches in R317-4-9.

C. Design and construction of seepage pits shall be as specified in Table 12.

TABLE 12
Seepage Pits Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
GENERAL:			
Diameter of pit	feet	3	--
Effective vertical sidewall absorption depth (per pit)	feet	4	--
Distance between seepage pits	(See Table 2)		
Diameter of distribution pipe	inches	4	--
Size of filter material	inches	3/4	12
HOLLOW-LINED PITS:			
Width of annular space between lining and sidewall containing crushed rock (3/4 to 2-1/2 inches in diameter)	inches	6 (b)	--
Thickness of reinforced perforated concrete lining	inches	2-1/2	--
Thickness of brick, or block linings	inches	4	--
Depth of filter material in pit bottom	inches	6	--
Horizontal dimension of manhole in cover	inches	18	--
FILLED SEEPAGE PITS:			
Depth of filter material:			
Under distribution pipe	feet	4 (c)	--
Over distribution pipe	inches	2	--
Thickness of compacted straw barrier over aggregate filter material	inches	2	--
Depth of backfill over barrier covering filter material	inches	6 (d)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the seepage pit (vertical sidewall area) calculated below the inlet or distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably twelve inches.

(c) For a filled seepage pit, the entire pit shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(d) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

D. All seepage pits shall have a diameter of at least three feet.

E. Structural materials used throughout shall assure a durable, safe structure.

F. All seepage pits shall be either (1) hollow and lined with an acceptable material, or (2) filled with coarse stone or similar material that ranges from 3/4 to 12 inches in diameter and is free from fines, sand, clay, or organic material. Pits filled with coarse stone are preferred over hollow-lined pits. Linings of brick, stone, block, or similar materials shall have a minimum thickness of four inches and shall be laid with overlapping, tight-butted joints. Below the inlet level, mortar shall be used in the horizontal joints only. Above the inlet, all joints shall be fully mortared.

G. For hollow-lined pits, the inlet pipe should extend horizontally at least 1 foot into the pit with a tee to divert flow downward and prevent washing and eroding the sidewall. A minimum annular space of six inches between the lining and excavation wall shall be filled with crushed rock or gravel varying in diameter from 3/4 to 2-1/2 inches and free from fines, sand, clay, or organic material. The maximum fines in the gravel shall be 2 percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. Clean coarse gravel or rock at least six inches deep shall be placed in the bottom of each pit.

H. A structurally sound and otherwise suitable top shall be provided that will prevent entrance of surface water, dirt, or other foreign material, and be capable of supporting the overburden of earth and any reasonable load to which it is subjected. Access to each hollow-lined pit shall be provided by means of a manhole, not less than 18 inches in minimum horizontal dimension, or by means of an easily removable cover and shall otherwise comply with R317-4-7. The top of the pit shall be covered with a minimum of six inches of backfill.

I. In pits filled with coarse stone, the perforated distribution pipe shall run across each pit. A layer of crushed rock or gravel shall be used for leveling the distribution pipe as specified in R317-4-9.

9.7. Absorption Beds. Absorption beds consist of large excavated areas, usually rectangular, provided with "gravel" filter material in which 2 or more distribution pipe lines are laid. They may be used in lieu of other approved absorption systems where conditions justify their use and shall conform to the requirements applying to absorption trenches, except for the following:

A. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavation.

B. The minimum required absorption area for absorption beds shall be determined from Table 13 by using the results of percolation tests conducted in accordance with R317-4-5.

TABLE 13
Absorption Bed
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates) (a) (b)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per square foot per day (e)(f)
1-10 (g)	330	0.80
11-15	380	0.65
16-20	424	0.55
21-30 (g)	500	0.45

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) This table provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case, a minimum of 300 square feet of absorption bed bottom absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Absorption beds are not permitted in areas where the soil percolation rate is slower than one inch in 30 minutes or faster than one inch in one minute.

C. Isolation of absorption beds shall be not less than the minimum distances specified in Table 2.

D. Design and construction of absorption beds shall be as specified in Table 14.

TABLE 14
Absorption Bed Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Length	feet	--	100 (b)
Number of lines	--	2 (c)	--
Slope	inches/100 ft.	(d)	4
Depth of absorption bed (from ground surface)	inches	12	(e)
DISTANCE BETWEEN MULTIPLE LINES (c to c)	feet	--	6
DISTANCE BETWEEN DISTRIBUTION LINES AND SIDEWALLS (edge to edge)	feet	1	3
DISTANCE BETWEEN ABSORPTION BEDS	(See Table 2)		
BOTTOM OF BED TO MAXIMUM GROUND WATER TABLE	feet	2	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	feet	4	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines: 1/2 inch mesh(a) (12.5 millimeter)	percent	0	5
#10 mesh(a) (2.0 millimeter)	percent	0	2
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			
Under pipe	inches	6 (f)	--
Over pipe	inches	2	--
Total	inches	12	--
Under pipe located within 10 feet of trees or shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the excavation in square feet.

(b) Preferably not more than 60 feet long.

(c) Of near equal length.

(d) Preferably level.

(e) Absorption beds should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.

(f) Preferably eight inches.

(g) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

E. Absorption beds should be installed where the slope of the ground surface is relatively level, sloping no more than about six inches from the highest to the lowest point in the installation area. The bottom of the entire absorption bed shall be essentially level, at the same elevation, and the distribution pipes shall be interconnected to produce a continuous system.

R317-4-10. Experimental Onsite Wastewater Systems.

10.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and disposal may be employed provided they are acceptable to the Division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the Division shall not be restricted by this rule provided that:

1. The experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment.

2. The proposal for an experimental onsite wastewater system must be in the name of and bear the signature of the person who will own the system.

3. The person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the Division may designate them as approved alternative onsite wastewater systems. Following this approval of alternative onsite wastewater systems, the Division will adopt rules governing their use.

10.2. General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as shown in R317-4-5.

2. The local health department must advise the owner of the system of the experimental status of that type of system. The advisory must contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements which are all specific to the type of system to be installed.

3. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations must be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded on the deed of ownership for that property.

R317-4-11. Alternative Onsite Wastewater Systems.

11.1. Administrative Requirements. The local health department having jurisdiction must obtain approval from the division to administer an alternative onsite wastewater system program, as outlined in this section, prior to permitting alternative onsite wastewater systems. Alternative onsite wastewater systems are only to be installed where site limitations prevent the use of conventional onsite wastewater systems.

A. The following alternative onsite wastewater systems may be considered for use upon the executive secretary's approval of a written request from the local health department to administer an alternative onsite wastewater system program.

TABLE 15

System	Rule Reference
Earth fill Systems	R317-4-11.2
"At-Grade" Systems	R317-4-11.3
Mound Systems	R317-4-11.4

The local health department request for approval must include a description of their plan to properly manage these systems to protect public health and water quality. This plan must include:

1. Documentation of the adequacy of staff resources to manage the increased work load.

2. Documentation of the technical capability to administer the new systems including any training plans which are needed.

3. A description of measures to be taken by the local health department to insure that designers and installers of these systems are qualified.

4. A description of the methods which will be used to determine the maximum anticipated high ground water table elevation.

5. Documentation that the Local Board of Health and County Commission support this request.

6. A description of how these systems will be managed, inspected and monitored.

7. A ground water management plan which identifies maximum septic system densities to be allowed in order to prevent unacceptable degradation of ground water, or a schedule for completing an acceptable plan within one year. This requirement may be waived or modified by the executive secretary where it can be shown that these systems would be relatively few in number and widely separated, thereby having negligible impact on ground water quality, or where the ground water aquifers vary greatly over relatively short distances making such a ground water study impractical.

8. Documentation of the county's legal authority to implement and enforce correction of malfunctioning systems and their commitment to exercise this authority.

B. All alternative onsite wastewater systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as shown in R317-4-5.

2. The local health department must advise the owner of the system of the alternative status of that type of system. The advisory must contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements which are all specific to the type of system to be installed.

3. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations must be approved by the local health department.

C. When an alternative onsite wastewater system exists on a property, notification of the existence of that system shall be recorded on the deed of ownership for that property.

11.2. Installation in Earth Fill.

A. Installation of absorption systems in earth fill will be allowed only by the regulatory authority having jurisdiction in accordance with these rules. Installation of absorption systems in earth fill is an alternative disposal method. Conditions for use of alternative onsite wastewater systems are shown in R317-4-11.

B. Absorption trenches and absorption bed type systems may be placed in earth fill. Absorption trench systems placed in earth fill can only be installed over natural soils with a percolation rate range between five and 60 minutes per inch; and absorption bed systems over soils with a percolation rate range of five to 30 minutes per inch.

C. Naturally existing soil with an unacceptable percolation rate may be removed and replaced with earth fill with an acceptable, in-place percolation rate, if the removal of the original soil does not cause other unacceptable site conditions and if acceptable natural soil exists below the replacement. The site must conform to all other acceptability conditions.

D. The maximum acceptable existing slope of a site upon which an "at grade" or "above grade" onsite system can be placed with the use of earth fill is four percent.

E. The minimum area of fill to be placed shall be sufficient to install a system sized for the number of bedrooms in the home, using the percolation rate of 60 minutes per inch. The fill area shall be sized to accommodate an absorption system for a home with a minimum of three bedrooms, and shall include all required clearances within, and outside of the fill and absorption system area.

F. The area of original fill placement shall include that area required for a 100 percent replacement of the drainfield, with all required clearances. The area between trenches shall not be used for replacement area.

G. The fill depth below the bottom of the absorption system shall not exceed six feet.

H. The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

I. The earth fill shall be considered to be acceptably stabilized if it is allowed to naturally settle for a minimum period of one year, sized to result in its minimum required dimensions after the settling period. Mechanical compaction shall not be allowed.

J. All onsite wastewater systems placed in earth fill shall conform to all other applicable requirements of R317-4, "Onsite Wastewater Systems".

K. The onsite wastewater system and local area surrounding them shall be graded to drain surface water away from the absorption system.

L. After the fill has settled for a minimum of one year, a minimum of two (2) percolation tests/soil exploration tests shall be conducted in the fill. One shall be conducted in the proposed absorption system area and one in the proposed replacement area of the fill. The suitably stabilized fill shall have an in-place percolation rate of between 15 and 45 minutes per inch.

M. The maximum exposed side slope for fill surfaces shall be four horizontal to one vertical. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope. A suitable soil cap, which will support a vegetative cover, shall cover the entire fill body. The cap shall be provided with a vegetative cover. Access to the fill site shall be restricted to minimize erosion and other physical damage.

11.3. "At-Grade" Systems.

A. Where site conditions may restrict the installation of a standard absorption system, an "at-grade" system may be used. It shall be designed, installed, operated and monitored in accordance with these rules. An "at-grade" system is considered to be an alternative disposal method. Conditions for use of alternative wastewater systems are shown in R317-4-11.

B. Absorption trenches and absorption bed type absorption systems may be placed in the "at-grade" position. Absorption systems placed "at-grade" can only be installed over natural soils with a percolation rate range between five and 60 minutes per inch; and absorption bed systems over soils with a percolation rate range of five to 30 minutes per inch.

C. The minimum distance from the top of finished grade to the high seasonal ground water table or perched ground water table shall be four feet.

D. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope.

E. The maximum side slope for above ground fill shall be four (horizontal) : one (Vertical).

F. Maximum acceptable slope of original site surface for placement of an "at-grade" system is four percent.

G. The site shall be cleared of vegetation and scarified to an approximate depth of six inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

11.4. Mound Systems.

A. Where site conditions may restrict the use of a standard absorption system, a mound system may be used. It shall be designed, installed, operated and monitored in accordance with these rules. A mound system is considered to be an alternative disposal method. Conditions for use of alternative wastewater systems are shown in R317-4-11.1.

B. The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

C. The two foot minimum thick unsaturated soil treatment horizon below the bottom of the absorption system shall consist of a minimum of one foot of suitable natural soil.

D. Mound systems shall not be located on sites where the original prevailing surface grade exceeds four percent.

E. All mound type onsite systems shall utilize pressurized systems for distribution of effluent in the absorption system.

F. The local health department in whose jurisdiction the mounds with pressurized systems are to be used, shall have an approved maintenance program in place.

G. The design effluent loading rate through the absorption system bottom to sand fill interface shall be 0.8 gallons per day per square foot of absorption system bottom area.

H. The effluent loading rate at the sand fill to native soil interface shall as specified in Table 16:

TABLE 16

Effluent Loading Rate from Sand Fill to the Natural Soil Surface

PERCOLATION RATE OF NATURAL SOIL (Minutes per inch)	UNIT	LOADING RATE
1-10	gallons per day per square foot	0.45
11-15	gallons per day per square foot	0.40
16-20	gallons per day per square foot	0.35
21-30	gallons per day per square foot	0.30
31-45	gallons per day per square foot	0.25
46-60	gallons per day per square foot	0.20

I. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of six inches below the distribution pipe, the diameter of the distribution pipe and two inches above the distribution pipe or ten inches, whichever is larger.

J. Mound systems shall be designed in accordance with "Mound Soil Absorption System Siting, Design and Construction Guidance Manual, April 1, 1996", which is hereby incorporated by reference. A copy is available for public review from the Division of Water Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, UT, 84114-4870.

11.5. Supplemental Requirements for Maintenance and

Monitoring of "At-Grade" and Earth Fill Alternative Onsite Wastewater Systems.

A. These requirements are to be applied in addition to the requirements specified in R317-4-13 where applicable.

B. These systems shall be monitored at a period of six months and one year after initial use of the system and annually thereafter for a total of five years. Repairs shall be made at any time to a malfunctioning system, as soon as possible after the malfunction is discovered.

C. The local health department in whose jurisdiction the alternative system is installed shall be responsible for formulation of, administration and supervision of a maintenance and monitoring program that is approved by the Division.

11.6. Supplemental Requirements for Maintenance and Monitoring of Pressure Distribution Alternative Onsite Wastewater Systems.

A. These requirements are to be applied in addition to the requirements specified R317-4-13, where applicable.

B. These systems shall be monitored every six months throughout the life of the system. Repairs shall be made at any time to a malfunctioning system, as soon as possible after the malfunction is discovered.

C. The local health department in whose jurisdiction the pressurized system is installed shall be responsible for formulation of, administration and supervision of a maintenance and monitoring program that is approved by the Division.

D. Additional requirements for maintenance of these systems are contained in "Mound Soil Absorption System Siting, Design and Construction Guidance Manual, April 1, 1996", which is hereby incorporated by reference. A copy is available for public review from the Division of Water Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, UT, 84114-4870.

R317-4-12. Design, Installation, and Maintenance of Sewage Holding Tanks.

12.1. Sewage Holding Tanks - Administrative Requirements.

A. Sewage holding tanks are permitted only under the following conditions:

1. Where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable.

2. As a temporary (not to exceed one year) wastewater system for a new dwelling until a connection is made to an approved sewage collection system.

3. For other essential and unusual situations where both the Division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner which provides long-term protection of the waters of the state. Requests for the use of sewage holding tanks in this instance must receive the written approval of both agencies prior to the installation of such devices.

4. Requests for the use of sewage holding tanks under subparagraphs A and B above must receive the written approval of the local health department prior to the installation of such devices.

B. Except on those lots recorded and approved for sewage holding tanks prior to May 21, 1984, sewage holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the Division and the local health department having jurisdiction.

C. The design, installation, and maintenance of all sewage holding tanks, except those for recreational and liquid waste pumper vehicles, must comply with the following:

12.2. General Requirements.

A. No sewage holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement must be submitted by the owner indicating that in the event his sewage holding tank is approved, he will enter into a contract with an acceptable liquid waste pumping company, or make other arrangements meeting the approval of the regulatory authority having jurisdiction, that the tank will be pumped periodically, at regular intervals or as needed, and that the wastewater contents will be disposed of in a manner and at a facility meeting approval of those regulatory authorities.

C. If authorization is necessary for disposal of sewage at certain facilities, evidence of such authorization must be submitted for review.

12.3. Basic Plan Information Required. Plan information for each sewage holding tank, except those in recreational and liquid waste pumper vehicles, shall comply with the following criteria:

A. Location or complete address of dwelling to be served by sewage holding tank and the name, current address, and telephone number of the person who will own the proposed sewage holding tank.

B. A plot or site plan showing:

1. direction of north,
2. number of bedrooms,
3. location and liquid capacity of sewage holding tank,
4. source and location of domestic water supply,
5. location of water service line and building sewer, and
6. location of streams, ditches, watercourses, ponds, etc., near property.

C. Plan detail of sewage holding tank and high sewage level warning device.

D. Relative elevations of:

1. building floor drain,
2. building sewer,
3. invert of inlet for tank,
4. lowest plumbing fixture or drain in building served, and
5. the maximum liquid level of the tank.

E. Statement indicating the present and maximum anticipated ground water table.

F. Liquid waste pumping arrangements for sewage holding tank.

12.4. Construction.

A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All sewage holding tanks shall comply with the manufacturing materials and construction requirements specified for septic

tanks.

B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water. All prefabricated or precast sewage holding tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the inlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons.

C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

D. A high water warning device shall be installed on each tank to indicate when it is within 75 percent of being full. This device shall be either an audible or a visual alarm. If the latter, it shall be conspicuously mounted. All wiring and mechanical parts of such devices shall be corrosion resistant and all conduit passage ways through the tank top or walls shall be water and vapor tight.

E. No overflow, vent, or other opening shall be provided in the tank other than those described above.

F. The regulatory authority may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

G. The slope of the building sewer shall comply with R317-4-6.

12.5. Capacity. Each tank shall be large enough to hold a minimum of seven days sewage flow or 1,000 gallons, whichever is larger. The liquid capacity of the sewage holding tank should be based on sewage flows for the type of dwelling or facility being served (Table 3) and on the desired time period between each pumping. The length of time between pumpings may be increased by careful water management, low volume plumbing fixtures, etc.

12.6. Location. Sewage holding tanks must be located:

A. In an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use.

B. In accordance with the requirements for septic tanks as specified in Table 2.

C. Where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.

12.7. Operation and Maintenance.

A. Sewage holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.

B. Sewage holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

C. A record of pumping dates, amounts pumped, and ultimate disposal sites should be maintained by the owner and made available to the appropriate regulatory authorities upon request.

D. Sewage holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the local health authority. Repairs or replacements shall be conducted under the direction of the local health authority. Major increases in the time of pumpings without significant changes in water usage could indicate leakage of the tanks.

E. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.

R317-4-13. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

13.1. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

A. Septic tanks must be cleaned before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

B. A septic tank which receives normal loading should be inspected at yearly intervals to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require cleaning every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be cleaned. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections. Scum and sludge accumulations can be measured as follows:

1. Scum can be measured with a long stick to which a weighted flap has been hinged, or any device that can be used to determine the bottom of the scum mat. The stick is forced through the mat, the hinged flap falls into a horizontal position, and the stick is lifted until resistance from the bottom of the scum is felt. With the same tool, the distance to the bottom of the outlet device (baffle or tee) can be found.

2. Sludge can be measured with a long stick wrapped with rough, white toweling and lowered into the bottom of the tank. The stick should be small enough in diameter so it can be lowered through the outlet device (baffle or tee) to avoid scum particles. After several minutes, if the stick is carefully removed, the height to which the solids (sludge) have built up can be distinguished by black particles clinging to the toweling.

C. The tank should be pumped out if either the bottom of the floating scum mat is within three inches of the bottom of the outlet device (baffle or tee) or the sludge level has built up to

approximately 12 inches from the bottom of the outlet device (baffle or tee). Little long-term benefit is derived by pumping out only the liquid waste in septic tanks. All three wastewater components, scum, sludge, and liquid waste should be removed. Tanks should not be washed or disinfected after pumping. A small amount of sludge should be left in the tank for seeding purposes.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to insure that each tank or compartment is inspected and cleaned. Hollow-lined seepage pits may require cleaning on some occasions.

E. Professional septic tank cleaners, with tank trucks and pumping equipment, are located in most large communities and can be hired to perform cleaning service. In any case, the septic tank wastes contain disease causing organisms and must be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with State rules.

F. The digestion of sewage solids gives off explosive, asphyxiating gases. Therefore, extreme caution should be observed if entering a tank for cleaning, inspection, or maintenance. Forced ventilation or oxygen masks and a safety harness should be used.

G. Immediate replacement of broken-off inlet or outlet fittings in the septic tank is essential for effective operation of the system. On occasion, paper and solids become compacted in the vertical leg of an inlet sanitary tee. Corrective measures include providing a nonplugging sanitary tee of wide sweep design or a baffle.

H. Following septic tank cleaning, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light. Distribution boxes, if provided, should be inspected and cleaned when the septic tank is cleaned.

I. A written record of all cleaning and maintenance to the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants or other chemicals; therefore, use of these materials is not recommended.

K. Waste brine from household water softening units, soaps, detergents, bleaches, drain cleaners, and other similar materials, as normally used in a home or small commercial establishment, will have no appreciable adverse effect on the system. If the septic tank is adequately sized as herein required, the dilution factor available will be sufficient to overcome any harmful effects that might otherwise occur. The advice of your local health department and other responsible officials should be sought before chemicals arising from a hobby or home industry are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks which can add substantial amounts of water to the system. Industrial wastes, and other liquids that may adversely affect the operation of the individual wastewater disposal system should not be discharged into such a system. Paper towels, facial tissue, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

M. Crushed, broken, or plugged distribution pipes should be replaced immediately.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
February 16, 2000 19-5-104

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community Based Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114-3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, dated July 1, 1998;

(2) Waiver for Elderly Individuals 65 Years of Age and Older, dated July 1, 1995;

(3) Waiver for Individuals with Acquired Brain Injury 18 Years of Age and Older, dated July 1, 1999;

(4) Waiver for the Physically Disabled. dated July 1, 1998;

(5) Waiver for Individuals with Developmental Disabilities or Mental Retardation, dated July 1, 1995.

KEY: medicaid
March 30, 2000 **26-18-3**

R434. Health, Health Systems Improvement, Primary Care and Rural Health.
R434-20. Special Population Health Care Provider Financial Assistance Program.
R434-20-1. Purpose.

This rule provides criteria for the implementation of the Special Population Health Care Provider Financial Assistance and Retention Act; the award of grant funds to primary health care providers to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become primary health care providers, in exchange for practicing for a specified period of time in a medically underserved urban area of the state.

R434-20-2. Definitions.

The definitions as they appear in Section 26-9e-2 apply. In addition:

(1) "Applicant" means a person who submits a completed application for a grant or scholarship under this part.

(2) "Approved site" means an eligible site which is approved by the committee pursuant to Subsection 26-9e-2(15).

(3) "Department" means the Utah Department of Health.

(4) "Eligible site" means a site that the committee has designated as meeting the eligibility criteria established by the committee and is in a medically underserved urban area pursuant to Subsections 26-9e-5 (1)(f) and 26-9e-2(15).

(5) "Grant" means loan repayment as defined in Subsection 26-9e-2(6).

(6) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for primary health care provider licensure and as required by this rule.

(7) "Scholarship"means an award of money for educational expenses given to an individual under a contract where the individual agrees to become a primary health care provider in exchange for practicing for a specified period of time in a medically underserved urban area in the state.

R434-20-3. Grant Administration.

(1) The department may provide a grant to repay loans taken for primary health care provider educational expenses.

(2) The grant recipient may not enter into any other similar contracts until he satisfies the service obligation described in the grant.

(3) For a grant recipient with a four year contract, the state shall provide 20% of the grant at the completion of the first three months, 20% of the grant at the completion of year one, 20% at the completion of year two, 20% at the completion of year three, and 20% at the completion of year four.

(4) For a grant recipient with a three year contract, the state shall provide 25% of the grant at the completion of the first three months, 25% of the grant at the completion of year one, 25% at the completion of year two, and 25% at the completion of year three.

(5) For a grant recipient with a two year contract, the state shall provide 33% of the grant at the completion of the first three months, 33% of the grant at the completion of year one, and 34% at the completion of year two.

(6) A grant recipient must have a permanent, unrestricted license to practice in their primary health care specialty in Utah before his first day of practice under the grant contract.

(7) A grant recipient must obtain approval from the committee, of the eligible site to complete his service obligation, prior to beginning to fulfill his service obligation at an eligible site.

(8) A grant recipient must obtain approval prior to changing the approved site where he fulfills his service obligation.

R434-20-4. Full-Time Equivalency Provisions for Grant Recipients.

(1) The annual grant amount is based on the level of full-time equivalency that the grant recipient agrees to work.

(2) A grant recipient who provides services for at least 40 hours per week may be awarded a grant based on the percentages outlined in Section R434-20-3.

(3) A grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower grant based on a full-time equivalency of 40 hours per week.

R434-20-5. Grant Eligibility and Selection.

(1) In selecting a grant recipient for a grant award, the committee shall evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a primary health care specialty needed at an eligible site;

(b) the applicant's commitment to serve in a medically underserved urban area which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to serve special populations;

(c) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(d) the length of the applicant's proposed service obligation, with greater consideration given to applicants who agree to serve for longer periods of time;

(e) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving special populations,

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the committee that establishes his professional competence or conduct;

(f) the applicant's financial need;

(g) the applicant's willingness to accept Medicaid,

Medicare, Utah Medical Assistance, and Children's Health Insurance Program patients;

(h) the applicant's willingness to provide care regardless of a patient's ability to pay;

(i) the applicant's ability and willingness to provide care;

(j) the applicant's achieving an early match with an eligible site.

(2) To be eligible for a grant, an applicant must be a United States citizen or permanent resident.

(3) To be eligible for a grant, an applicant must be enrolled in or have completed postgraduate training prior to submitting an application to participate in the grant program.

(4) Only grant applicants who are available to begin practicing as a primary health care provider in the state within one year from the date of application are eligible for this program.

R434-20-6. Dentist Grant Eligibility and Selection.

(1) In selecting a Dentist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Dentist grant recipient for a grant award, the committee shall also evaluate the Dentist applicant based on the following selection criteria:

(a) must have attended a dental school accredited by the American Dental Association.

(b) must have passed the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

(c) must have passed the Western Regional Examining Board; Central Regional Dental Testing Service, Inc.; Northeast Regional Board of Dental Examiners, Inc.; or Southern Regional Testing Agency, Inc., examinations pursuant to Subsection R156-69-302b(2).

R434-20-7. Mental Health Therapist Grant Eligibility and Selection.

(1) In selecting a Mental Health Therapist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a clinical psychologist grant recipient for a grant award, the committee shall also evaluate the clinical psychologist applicant based on the following selection criteria:

(a) must have attended a school accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must be completing or have completed a minimum two year supervised clinical internship prior to submitting an application to participate in the grant program.

(c) must have passed the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must have passed the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(3) In selecting a clinical social worker grant recipient for a grant award, the committee shall also evaluate the clinical social worker applicant based on the following selection criteria:

(a) must have attended a school accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must be completing or have completed a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must have passed the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must have passed the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(4) In selecting a marriage and family therapist grant recipient for a grant award, the committee shall also evaluate the marriage and family therapist applicant based on the following selection criteria:

(a) must have attended a school accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must be completing or have completed 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(5) In selecting a professional counselor grant recipient for a grant award, the committee shall also evaluate the professional counselor applicant based on the following selection criteria:

(a) must have attended a school accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the requirements of Subsection 58-60-405(4).

(b) must be completing or have completed 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection R156-60c-302d(1)(a).

(d) must have passed the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must have passed the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-8. Physician Grant Eligibility and Selection.

(1) In selecting a Physician grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician grant recipient for a grant award, the committee shall also evaluate the Physician applicant based on the following selection criteria:

(a) must have attended an accredited school of allopathic or osteopathic medicine, accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must be enrolled in or have completed a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada, prior to submitting an application to participate in the grant program.

(c) must have passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-9. Physician Assistant Grant Eligibility and Selection.

(1) In selecting a Physician Assistant grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician Assistant grant recipient for a grant award, the committee shall also evaluate the Physician Assistant applicant based on the following selection criteria:

(a) must be enrolled in or completing a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) must have passed the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, pursuant to Section R156-70a-302(1).

(c) must have passed the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(d) must have a permanent, unrestricted license to practice medicine as a physician assistant in Utah.

(e) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(3) The department may not provide a grant to a physician assistant until the physician assistant passes the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam.

R434-20-10. Eligible Bona Fide Loans.

(1) A bona fide loan may include the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person which is documented by a contract notarized at the time of the making of the loan; indicative of an arm's length transaction, and with competitive term and rate as other loans available to primary health care provider students.

(d) a loan that the applicant conclusively demonstrates is a bona fide loan.

R434-20-11. Extension of Grant Contract.

(1) A grant recipient who has signed a grant contract for less than four years may apply on or after his first day of practice under a grant to extend his grant contract by one or two years, up to a maximum of four years total.

(2) The grant contract may be extended only at an approved site.

(3) A grant recipient who desires to extend his grant contract must inform the committee in writing of his interest in extending his grant contract at least six months prior to the termination of his unextended grant contract.

R434-20-12. Schedule of Breach of Grant Contract Repayment.

(1) A grant recipient who fails to complete the service obligation shall begin to repay the penalty to the department within 30 days of the breach. The department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the grant recipient had breached at the end of the month.

(3) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

R434-20-13. Scholarship Administration.

(1) The department may provide scholarship funds to a scholarship recipient for a maximum of four years of postgraduate schooling or until completion of postgraduate schooling, whichever is shorter.

(2) For each academic year the committee may award $12,000 to a scholarship recipient.

(3) The committee may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(4) The scholarship recipient may not enter into a scholarship contract other than with the program established in Section 26-9e-1 until the service obligation agreed upon in the state scholarship contract is satisfied.

(5) A scholarship recipient must work full-time, as defined by the scholarship recipient's employer and as specified in his

contract with the department.

(6) A scholarship recipient must serve one year of service obligation for each year he received a scholarship under this program.

(7) The committee may cancel a scholarship at any time if it finds that the scholarship recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship recipient does not intend to practice as required by statute, rules, and contract in a medically underserved urban area in the state.

(8) Upon completion of schooling and required postgraduate training, the scholarship recipient is responsible to find employment at an eligible site in a medically underserved urban area of Utah.

(9) A scholarship recipient must obtain approval from the committee prior to beginning service obligation at an eligible site.

(10) A scholarship recipient must obtain approval from the committee prior to changing the approved site where he fulfills his service obligation.

(11) A dental, medical, mental health therapist, and osteopathic scholarship recipient must:

(a) begin required postgraduate training within six months after he obtains his degree. Postgraduate training must be continuous unless the scholarship recipient obtains prior approval from the director of the scholarship recipient's training program and from the committee.

(b) obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within six months of completion of postgraduate training.

(12) Medical and Osteopathic scholarship recipients shall:

(a) select for postgraduate training a residency in one of the following areas: family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. If the scholarship recipient desires to choose a postgraduate training program in a medical specialty other than family practice, general internal medicine, general pediatrics, or obstetrics/gynecology, he must demonstrate the need for the medical specialty in a medically underserved urban area and obtain approval from the committee.

(b) attend a minimum three-year postgraduate training program.

(13) Physician assistant scholarship recipients:

(a) must obtain a temporary physician assistant license and begin practicing medicine at an eligible site for the agreed upon period of time within six months of completion of physician assistant education.

(b) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(c) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam the first time it is offered after completion of physician assistant schooling. After the physician assistant scholarship recipient passes this exam he shall obtain a permanent, unrestricted license as a physician assistant as soon as possible.

(d) if the physician assistant scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the National Certification Exam. If the physician assistant scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the physician assistant scholarship recipient is unable to practice at an approved site, does not count against retiring the service obligation under the contract.

R434-20-14. Scholarship Applicant Eligibility and Selection.

(1) In selecting a recipient for a scholarship, the committee shall evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in a medically underserved urban area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve special populations or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) has declared a commitment to practice in a medically underserved urban area as expressed in the essay which is required as part of the scholarship application;

(v) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to special populations.

(b) the applicant's need for assistance in financing his education;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school approved by the committee;

(e) the applicant's personal and professional references demonstrating the applicant's good character and potential to successfully complete school.

(2) In selecting a scholarship recipient, the committee may give preference to:

(a) applicants who agree to serve in a medically underserved urban area of the state for a greater length of time in return for scholarship assistance;

(b) physician applicants who agree to complete their postgraduate training in one of the following specialties: family practice, general internal medicine, general pediatrics, obstetrics/gynecology, or psychiatry.

(3) To be eligible to receive a scholarship, an applicant must be a United States citizen or permanent resident.

(4) Before the committee awards a scholarship, applicants must participate in an interview with the committee or its designee.

(5) To remain eligible to receive scholarship funds, an scholarship recipient must satisfactorily complete each year of school and be a full-time matriculated student.

R434-20-15. Scholarship Recipient Obligations.

(1) A scholarship recipient must maintain minimum continuous registration to maintain full-time student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed six years, unless extended pursuant to R434-20-11.

(2) Within six months before and not exceeding one month following completion of postgraduate training, a scholarship recipient shall provide to the department documented evidence from an eligible site of its intent to hire him.

(3) Upon completion of schooling or postgraduate training, the scholarship recipient is responsible for finding employment at an eligible site in a medically underserved urban area of Utah.

(4) A scholarship recipient must obtain an unrestricted license to practice in Utah prior to beginning practice at the approved site.

(5) A scholarship recipient must obtain approval from the committee prior to beginning to fulfill his service obligation at an eligible site.

(6) A scholarship recipient must begin employment at the approved site within six months of completion of postgraduate training.

(7) A scholarship recipient, upon completion of postgraduate training, must demonstrate willingness to serve special populations by:

(a) accepting Medicare, Medicaid, Utah Medical Assistance Program, and Children's Health Insurance Program patients;

(b) providing care regardless of patient's ability to pay;

(c) showing ability and willingness to provide care.

(8) The minimum length of service obligation is two years, or such longer period to which the applicant and the committee agree.

(9) The scholarship recipient must obtain committee approval prior to changing the approved site where he fulfills his service obligation.

R434-20-16. Dentist Scholarship Recipient Obligations.

(1) A Dentist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a dental school accredited by the American Dental Association.

(b) must pass the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

(c) must pass the Western Regional Examining Board; Central Regional Dental Testing Service, Inc.; Northeast Regional Board of Dental Examiners, Inc.; or Southern Regional Testing Agency, Inc., examinations pursuant to Subsection R156-69-302b(2).

R434-20-17. Mental Health Therapist Scholarship Recipient Obligations.

(1) A clinical psychologist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must complete a minimum two year supervised clinical internship.

(c) must pass the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must pass the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(2) A clinical social worker scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must complete a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years.

(c) must pass the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must pass the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must pass the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(3) A marriage and family therapist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must complete 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year.

(c) must pass the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(4) A professional counselor scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the

requirements of Subsection 58-60-405(4).

(b) must complete 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year.

(c) must pass the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection R156-60c-302d(1)(a).

(d) must pass the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must pass the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-18. Physician Scholarship Recipient Obligations.

(1) A Physician scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school of allopathic or osteopathic medicine, accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must enroll in and complete a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada.

(c) must pass the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-19. Physician Assistant Scholarship Recipient Obligations.

(1) A Physician Assistant scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must enroll in and complete a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam pursuant to Section R156-70a-302(1), the first time it is offered after completion of physician assistant schooling. After the scholarship recipient passes this exam he shall obtain a permanent unrestricted license to practice as soon as possible.

(c) if the scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the national certification exam. If the scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the scholarship recipient is unable to practice at an approved site does not count against retiring the obligated service under the contract.

(d) shall take the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(e) must obtain a temporary license to practice medicine as a physician assistant prior to beginning service obligation at the approved site.

(f) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

R434-20-20. Extension of Contract with Scholarship Recipient.

(1) The committee may extend the period within which the scholarship recipient must complete his dental, medical, mental health therapist, osteopathic, or physician assistant education:

(a) if the scholarship recipient has a serious illness;

(b) if the scholarship recipient is activated by the military;

(c) for other good cause shown, as determined by the committee.

(2) The service obligation may be extended only at an eligible site.

R434-20-21. Schedule of Breach of Scholarship Contract Repayment.

(1) A scholarship recipient who breaches his scholarship contract shall be evaluated based on the criteria listed in Subsections 26-9e-9(4) and 26-9e-9(5), as well as the following criteria:

(a) A scholarship recipient who fails to complete the required minimum postgraduate training within the time period agreed upon with the committee shall within 90 days after the deadline for completing his postgraduate training or within 90 days of his failure to continue his postgraduate training, whichever occurs earlier, repay:

(i) all scholarship money received according to a schedule established by the committee;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship amounts.

(b) The amount to be paid back shall be determined from the end of the month in which the scholarship recipient breached the contract as if the scholarship recipient had breached at the end of the month.

(c) The breaching scholarship recipient shall pay the total amount due within four years of breaching the contract. The scheduled pay back may not be less than four equal payments.

R434-20-22. Release of Recipient from Service Obligation.

(1) The committee may release a recipient from his service obligation without penalty:

(a) if the service obligation has been fulfilled;

(b) if he dies;

(c) for other good cause shown, as determined by the committee.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete dental, medical, mental health therapist, osteopathic, or physician assistant school or fulfill service obligation due to permanent disability that prevents the

recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

R434-20-23. Eligible Site Determination.

(1) Criteria the committee shall use to determine an eligible site include:

(a) Within a medically underserved urban area:

(i) the percentage of the population with incomes under 200% of the federal poverty level;

(ii) the percentage of the population 65 years of age and over;

(iii) the percentage of the population under 18 years of age;

(iv) the percentage of population that is homeless,

(v) the percentage of population that is migrant or seasonal farm workers,

(vi) the percentage of population that has HIV/AIDS.

(vii) the distance to the nearest primary health care provider and barriers to reaching the primary health care provider.

(c) The committee may give preference to sites which provide letters of support from:

(i) a majority of practicing primary health care providers in the service area,

(ii) county and civic leaders,

(iii) hospital administrators,

(iv) business leaders, local chamber of commerce, citizens, and

(v) local health departments.

(2) An eligible site approved to have a grant or scholarship recipient must offer a salary and benefit package competitive with salaries and benefits of other providers in the service area.

(3) A medically underserved urban area must apply to and gain approval from the committee in order to be determined eligible for a scholarship or grant recipient to complete their service obligation.

R434-20-24. Annual Assessment and Strategy.

(1) The committee shall annually complete an assessment and strategy on techniques to promote and facilitate the recruitment and retention of primary health care providers to serve special populations in medically underserved areas of the state.

(2) The committee shall develop alternative service obligation criteria that a grant or scholarship recipient may use to fulfill his service obligation if the grant or scholarship recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-20-25. Reporting.

The committee may require the recipient to provide information regarding the academic performance, commitment to medically underserved urban areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in dental, medical, mental health therapist, osteopathic, or physician assistant school; postgraduate training; and in practice.

KEY: grants, scholarships
March 24, 2000 **26-9e**

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Rules.
R501-12-1. Purpose Statement.

The purpose of these standards is to establish the minimum requirements for licensure of foster homes and proctor homes for children in the Department of Human Services, hereinafter referred to as DHS.

R501-12-2. Definitions.

A. "Foster care" means the provision of care which is conducive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

B. "Proctor care" means the provision of foster care for only one youth at a time placed in a licensed foster home. The youth shall be adjudicated to the custody of the Division of Youth Corrections.

C. "Licensing agent" means a person who is authorized to certify foster and proctor care providers in accordance with the legally approved Foster Care Rules.

D. "Foster care agency" is any authorized licensed private agency certifying providers for foster care services.

E. "Child" means anyone under 18 years of age with the exception of DYC proctor care where custody and guardianship may be maintained to the age of 21.

F. Rules applying to foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Authority.

Foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Youth Corrections, hereinafter referred to as DYC.

R501-12-4. Licensing and Renewal.

A. Application: An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing standards. The application shall require the applicant to list each member of the applicant's household.

B. Medical Information:

1. At the time of application, each potential foster parent shall obtain and submit to the foster care agency or the Office of Licensing, hereinafter referred to as OL, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster parent. On an annual basis thereafter, each foster parent shall submit a personal health status statement.

2. A psychological examination of a potential or current foster parent may be required by OL or the foster care agency if there are questions regarding the individual's mental stability which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

C. References:

The applicant shall submit the names of individuals not related to the applicant who may be contacted by the foster care agency or OL for a reference. The named individuals, such as neighbors, school personnel, or clergy, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the foster care agency or OL before a license will be issued.

D. Background Screening:

1. Criminal Background Screening, referred to as CBS, pursuant to 62A-2-120, requires that all child foster care applicants or persons 18 years of age or older living in the home must have the criminal background screening completed. This shall be completed on initial home approval and yearly thereafter. In accordance with 62A-2-120, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.

2. The child abuse data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of alleged abuse and neglect has been substantiated. This shall be done on initial home approval and yearly thereafter.

a. In accordance with 62A-4a-116(2)(b) the following types of abuse and neglect shall be considered for licensing purposes:

1) physical abuse,
2) sexual abuse,
3) sexual exploitation,
4) abandonment, medical neglect resulting in death, disability, or serious illness, or
5) chronic or severe neglect.

b. In accordance with 62A-2-121, if the name of any individual living in the home appears on the child abuse data base as substantiated, a license may be denied, approved, or renewed based on a comprehensive review of the individual circumstances, conducted by DHS, in accordance with R501-18.

E. Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster home. The home study shall be updated annually with a home visit.

F. Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

G. Training: Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

H. Approval or Denial:

1. Following pre-service training and submission of all required documentation, the home study and assessment of an applicant shall be completed.

2. A license shall be issued for applicants who meet Foster Care Licensing Rules. In addition, the applicants shall be responsible to identify and meet any local ordinances applicable to the type of care.

3. The decision to approve or deny the applicant shall be made on the basis of observable facts and the professional judgement of the foster care agency or OL regarding the safety and sanitation conditions of the home.

4. No person may be denied a foster care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

5. The provider shall be evaluated annually for compliance with standards when renewing a license.

6. Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

7. Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

8. Providers shall not be licensed or certified to provide foster care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

9. The Office of Licensing Director or designee may grant a variance to a rule if it is in the best interest of the specific child.

10. All providers shall report any major changes as listed in a. through e. in their lives to the licensor or foster care agency within 48 hours. These changes shall be re-evaluated within one month of the change by the licensor or foster care agency. A major change in the lives of the foster parents shall include, but is not limited to the following;

a. death or serious illness among the members of the foster family,

b. separation or divorce,

c. loss of employment,

d. change of residence, or

e. suspected abuse or neglect of any child in the foster home.

R501-12-5. Training.

A. Applicants shall attend training required by the applicable DHS Division or other approved entity and submit verification of completed training to the licensor or foster care agency.

B. At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

C. Providers associated with a foster care agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster Parent Requirements.

A. Personal characteristics of foster parents shall include the following:

1. Foster parents shall be in good health, able to provide physical and emotional care to the child.

2. Foster parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster parents.

3. Foster parents shall have the ability to help the child grow and change in behavior.

4. Foster parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to OL or foster care agency on an annual basis.

5. Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

6. Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.

7. Foster parents shall follow agency rules and work cooperatively with the agency, State Court, and law enforcement officials.

B. Family Composition shall meet the following:

1. The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

2. Variance requests for the following must address why a variance is in the best interests of the child, and how basic health and safety requirements will be maintained, in accordance with R501-1-8.

a. No more than two children under the age of two, shall reside in a foster home, including natural children.

b. No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

c. No more than four foster children shall be in any one home.

d. No more than six children shall be in a foster home including the foster parent's children under the age of 18.

e. No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DYC.

R501-12-7. Physical Aspects of Home.

A. The home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

B. The physical facilities of the home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

C. The home shall be free from health and fire hazards. Each home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

D. There shall be sufficient bedroom space to provide for the following:

1. rooms are not shared by children of the opposite sex, except infants under the age of two years,

2. children do not sleep in the parents' room, except infants under the age of two years,

3. each child has his or her own solidly constructed bed adequate to the child's size,

4. a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

5. no more than four children are housed in a single bedroom.

E. Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

F. Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

G. There shall be adequate indoor and outdoor space for recreational activities.

H. Foster homes shall offer sufficiently balanced meals to meet the child's needs.

I. All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

J. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

K. Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

L. Exits: There shall be at least two means of exit on each level of the home.

R501-12-8. Safety.

A. Foster families shall conduct and document fire drills at least quarterly.

B. Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety.

C. The home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

D. The home shall have an adequately supplied first aid kit.

E. Foster parents maintaining firearms in the home shall assure that the firearms are inaccessible to children at all times. Firearms and ammunition shall be securely locked. Firearms kept in the home or on the premises will be rendered inoperable when possible.

F. No firearms shall be allowed in foster homes that contract with DYC.

G. Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

H. There shall be locked storage for hazardous chemicals and materials.

R501-12-9. Emergency Plans.

A. Foster parents shall have a written plan of action for emergencies and disaster to include the following:

1. evacuation with a pre-arranged site for relocation,

2. transportation and relocation of children when necessary,

3. supervision of children after evacuation or relocation, and

4. notification of appropriate authorities.

B. Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

C. Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or foster care agency worker and OL licensor.

R501-12-10. Infectious Disease.

Foster parents shall abide by policies and procedures designed to prevent or control infectious and communicable diseases in the home.

R501-12-11. Medication.

A. Foster parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

B. Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

C. Non-prescriptive medications may be administered by foster parents according to manufacturer's instructions.

D. Medications shall not be administered by the foster child.

E. Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or foster care agency worker.

F. There shall be locked storage for medication.

R501-12-12. Transportation.

A. Foster parents shall provide routine transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

B. Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

C. Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

D. An emergency telephone number shall be in the vehicle used to transport children.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

R501-12-13. Behavior Management.

A. Foster parents shall provide appropriate supervision at all times.

B. Foster parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

C. The foster parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

D. Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

E. Foster parents shall inform the Division or foster care agency worker of any extreme or repeated behavioral problems of a child placed in the foster home.

R501-12-14. Child's Rights in Foster Care.

A. The foster parent shall adhere to the following:

1. allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special

prescribed diet,

2. allow the child to participate in family activities,

3. protect privacy of information,

4. not make copies of consumer records,

5. explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

6. not allow discrimination,

7. treat the child with dignity,

8. allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

9. follow visitation rights as provided by DHS or foster care agency worker,

10. allow the child to send and receive mail providing that security and general health and safety requirements are met, foster parents may only censor or monitor a foster child's mail or phone calls by court order,

11. provide for personal needs and clothing allowance, and

12. respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

A. Foster parents shall maintain the following:

1. current license certificate,

2. copy of each contract with the Department of Human Services,

3. record of money provided to each foster child,

4. record of expenditures for each foster child, and

5. documentation of special need payments on behalf of the foster child.

B. Foster parents shall maintain the out of home placement information record for each child in their care to include the following:

1. placement information for each child in out of home care,

2. biographical information, including an emergency contact name and telephone number,

3. documentation of the health care record of each child, including the following;

a. immunizations,

b. physical, mental, visual, and dental examinations,

c. emergencies requiring medical treatment, and

d. medication, when applicable, and

4. summary of family visits and contacts, when appropriate, according to the service plan.

C. Foster parents shall ensure that the out of home record accompanies the child or is returned to the foster care agency upon relocation of the child.

D. The OL staff shall maintain a separate record for each provider.

KEY: licensing, human services, foster care
March 17, 2000 62A-2-101-121

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Non-IV-A Services.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if income withholding is already in effect;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33, October 1, 1998, ed., which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support
March 24, 2000 **62A-11-107**
Notice of Continuation February 11, 1997

R527. Human Services, Recovery Services.
R527-475. State Tax Refund Intercept.
R527-475-1. State Tax Refund Intercept.

1. Pursuant to Section 59-10-529(1), the Office of Recovery Services/Child Support Services (ORS/CSS) may intercept a state tax refund to recover delinquent child support. For a state tax refund to be intercepted, there must be an administrative or judicial judgment with a balance owing. An installment of child support is considered a judgment for purposes of Section 59-10-529 on and after the date it becomes due as provided in Section 30-3-10.6.

2. State tax refunds intercepted will first be applied to current support, second to Non-IV-A arrearages, and third to satisfy obligations owed to the state and collected by ORS/CSS.

3. ORS/CSS shall mail prior written notice to the obligor who owes past-due support and the unobligated spouse that the state tax refund may be intercepted. The notice shall advise the unobligated spouse of his/her right to receive a portion of the tax refund if the unobligated spouse has earnings and files jointly with the obligor. If the unobligated spouse does not want his/her share of the tax refund to be applied to the obligated spouse's child support debt, the unobligated spouse shall make a written request and submit a copy of the tax return and W-2's to ORS/CSS at any time after prior notice, but in no case later than 25 days after the date ORS/CSS intercepts the tax refund. The unobligated spouse's portion of the joint tax refund will be prorated according to the percentage of income reported on the W-2 forms for the tax year. If the unobligated spouse does not make a written request to ORS/CSS to obtain his share of the tax refund within the specified time limit, ORS/CSS shall not be required to pay any portion of the tax refund to the unobligated spouse.

KEY: child support
January 10, 2000 **59-10-529**
Notice of Continuation March 24, 2000 **30-3-10.6**

R590. Insurance, Administration.
R590-170. Fiduciary and Trust Account Obligations.
R590-170-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Sections 31A-23-307, 31A-23-310 and 31A-23-312 and 31A-25-305 authorizing the commissioner to establish by rule, records to be kept by licensees.

R590-170-2. Purpose and Scope.

(1) The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations pursuant to Sections 31A-23-307, 31A-23-310 and 31A-25-305.

(2) This rule applies to all Chapter 31A-23 and Chapter 31A-25 licensees holding funds in a fiduciary capacity.

R590-170-3. Definitions.

For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-l-301 and the following:

(1) "Trust Account" means a checking or savings account where funds are held in a fiduciary capacity.

(2) "Accounts Receivable" means premiums, fees, or taxes invoiced by a licensee.

(3) "Accounts Payable" means premiums or fees due insurers that a licensee is responsible for invoicing and collecting from insureds on behalf of insurers and licensees and premium taxes due taxing entities.

(4) "Licensee" means a licensee under Chapters 31A-23 and 31A-25.

R590-170-4. Establishing the Trust Account.

(1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import. These records include checks, bank statements, general ledgers and records retained by the bank pertaining to the trust account.

(2) All trust accounts shall be established with a Federal Employer Identification Number rather than a Social Security Number.

(3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.

(4) A non-licensee may not be a signator on a licensee's trust account, unless the non-licensee signatory is an employee of the licesee and has specific responsibility for the licensee's trust account.

R590-170-5. Maintaining the Trust Account.

(1) Funds deposited into a trust account shall be limited to: premiums which may include commissions; return premiums; fees or taxes paid with premiums; financed premiums; funds held pursuant to a third party administrator contract; funds deposited with a title insurance agent in connection with any escrow settlement or closing, amounts necessary to cover bank charges on the trust account; and interest on the trust account, except as provided under Subsection 31A-23-307(2)(b).

(2) Disbursements from a trust account shall be limited to: premiums paid to insurers; return premiums to policyholders; transfer of commissions and fees; fees or taxes collected with premiums paid to insurers or taxing authority; funds paid pursuant to a third party administrator contract; funds disbursed by a title insurance agent in connection with any escrow settlement or closing; and the transfer of accrued interest.

(3) Personal or business expenses may not be paid from a trust account, even if sufficient commissions exist in the account to cover these expenses.

(4) Commissions may not be disbursed from a trust account prior to the beginning of the policy period for which the premium has been collected.

(5) Commissions attributed to premiums and fees collected must be disbursed from a trust account on a date not later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) Premiums due insurers may not be paid from a trust account unless the premiums directly relating to the amount due have been deposited into, and are being held in, the trust account, or unless funds have been retained in the trust account consistent with Subsection 5 above, or placed by a licensee into the trust account to finance premiums on behalf of insureds.

(7) Premiums financed by a licensee must be accounted for as a loan with interest charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23-304.

R590-170-6. Insurers' Access to Trust Accounts.

(1) Insurer access to licensee trust funds is not prohibited by the trust relationship, however, licensees must take reasonable steps to assure trust funds are protected from misappropriation by limiting access to those trust funds.

(2) An insurer desiring to access funds in a licensee's trust account may do so if:

(a) the contract between the insurer and the licensee allowing electronic funds transfers into or out of the licensee's trust account:

(i) expressly permits the insurer to withdraw only the amount authorized by the licensee for each transaction; and

(ii) specific authorization from the licensee of the amount to be withdrawn from the licensee's trust account must be received by the insurer prior to the withdrawal; or

(b) the licensee provides the insurer electronic funds transfer into or out of a separate trust account set up solely for trust funds deposited for that insurer.

(3) By implementing electronic funds transfers from a licensee's trust account, the insurer accepts the commissioner's right to oversight of all electronic funds transfers between the insurer and licensees.

(4) Insurers utilizing electronic funds transfer contracts will annually report to the commissioner the name of each licensee with whom they have such contracts.

(a) The report is due January 15 of each year.

(b) The report will include the name and address of each licensee and the line of business involved, i.e. personal lines, commercial lines, health, life, etc.

R590-170-7. Accounting Records to be Maintained.

(1) Bank statements for trust accounts shall be reconciled

monthly.

(2) An accounts receivable report showing credits and debits shall be maintained and reconciled monthly. This report must list, at a minimum, the account name and the amount and date due for each receivable. The sum of all receivables shall be shown on the report. Receivables that are over 90 days old and their sums shall be shown separately on the report.

(3) An accounts payable report showing the status of each account shall be maintained and reconciled monthly.

(4) Adequate records shall be maintained to establish ownership of all funds in the trust account, from whom they were received and for whom they are held.

(5) Trust account registers shall maintain a running balance.

(6) All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.

R590-170-8. Insurer Responsibility.

Insurers and their managing general agents shall provide a written report to the insurance commissioner within 15 days of either of the following:

(1) If a licensee fails to pay an account payable within 30 days of the due date. This does not apply where a legitimate dispute exists regarding the account payable if the licensee has properly notified the insurer of any disputed items and has provided documentation supporting that position; or

(2) If a licensee issues a check that when presented at the bank is not honored or is returned because of insufficient funds.

R590-170-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
March 7, 2000 **31A-2-201**
31A-23-312
31A-25-302
31A-25-305

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-1. Antidiscrimination.
R606-1-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-1-2. Definitions.

The following definitions are complementary to the statutory definitions specified in Section 34A-5-102, and shall apply to all rules of R606.

A. "Act" means the Utah Antidiscrimination Act, prohibiting discriminatory or unlawful employment practices.

B. "Charging party" means the person who initiated agency action.

C. "Director" means the Director, Division of Antidiscrimination and Labor.

D. "Division" means the Division of Antidiscrimination and Labor.

E. "Disability" is defined in Section 34A-5-102 and is further defined as follows:

1. Being regarded as having a disability is equivalent to being disabled or having a disability.

2. Having a record of an impairment substantially limiting one or more major life activities is equivalent to being disabled or having a disability.

3. Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

4. An individual will be considered substantially limited in the major life activity of employment or working if the individual is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

5. Has a record of such an impairment means has a history of, or has been regarded as having, a mental or physical impairment that substantially limits one or more major life activity.

6. Is regarded as having an impairment means:

a. has a physical or mental impairment that does not substantially limit major life activities but is treated as constituting such a limitation;

b. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or

c. has none of the impairments listed in the definition of physical or mental impairment above but is treated as having such an impairment.

F. "He, His, Him, or Himself" shall refer to either sex.

G. "Investigator" shall mean the individual designated by the Commission or Director to investigate complaints alleging discriminatory or prohibited employment practices.

H. "Qualified disabled individual" means a disabled individual who with reasonable accommodation can perform the essential functions of the job in question.

I. "Reasonable accommodation": For the purpose of enforcement of these rules and regulations the following criteria will be utilized to determine a reasonable accommodation.

1. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program

2. Reasonable accommodation may include:

a. making facilities used by the employees readily accessible to and useable by disabled individuals; and

b. job restructuring, modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

3. In determining pursuant to Rule R606-1-2.J.1 whether an accommodation would impose an undue hardship on the operation of an employer, factors to be considered include:

a. the overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

b. the type of the employer's operation, including the composition and structure of the employer's work force; and

c. the nature and cost of the accommodation needed.

4. An employer may not deny an employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Each complaint will be handled on a case-by-case basis because of the variable nature of disability and potential accommodation.

J. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

R606-1-3. Procedures--Request for Agency Action and Investigation File.

A. CONTENTS OF REQUEST FOR AGENCY ACTION

A request for agency action as specified in Section 34A-5-107, shall be filed at the Division office on a form designated by the Division. The completed form shall include all information required by Section 63-46b-3(3).

B. FILING OF REQUEST FOR AGENCY ACTION

1. A request for agency action must be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred.

2. A request for agency action shall be filed either by personal delivery or regular mail addressed to the Division's office in Salt Lake City, Utah.

3. Investigators and any other persons designated by the Division, shall be available to assist in the drafting and filing of requests for agency action at the Division's office during normal business hours.

C. RESPONSE/ANSWER TO REQUEST FOR AGENCY ACTION

1. The Division shall mail a copy of the request for agency action to the charging party and the respondent/employer within ten working days of the filing of the request for agency action.

2. The respondent must answer the allegations of discrimination or prohibited employment practice set out in the request for agency action in writing within ten working days of receipt of the request for agency action. The response/answer shall be mailed to the Division office.

D. AMENDMENT OF REQUEST FOR AGENCY ACTION

1. All allegations of discrimination or prohibited employment practice set out in the request for agency action may be amended, either by the Division or the charging party prior to commencement of an evidentiary hearing and the respondent may amend its answer. Amendments made during or after an evidentiary hearing may be made only with the permission of the presiding officer. The Division shall permit liberal amendment of requests for agency action and filing of supplemental requests for agency action in order to accomplish the purpose of the Act.

2. Amendments or a supplemental request for agency action shall be in writing, or on forms furnished by the Division, signed and verified. Copies shall be filed in the same manner as in the case of original requests for agency action.

3. Amendments or a supplemental request for agency action shall be served on the respondent as in the case of an original request for agency action.

4. A request for agency action or a supplemental request for agency action may be withdrawn by the charging party prior to the issuance of a final order.

E. MAILING OF REQUEST FOR AGENCY ACTION

The mailing specified in Section 63-46b-3(3) shall be performed by the Division and the persons known to have a direct interest in the requested agency action as specified in Section 63-46b-3(3)(b) shall be the charging party and the respondent/employer.

F. CLASSIFICATION OF PROCEEDING FOR PURPOSE OF UTAH ADMINISTRATIVE PROCEDURES ACT

Pursuant to Section 63-46b-4(1), the procedures specified in Section 34A-5-107(1) through (5) are an informal process with no hearing and are governed by Section 63-46b-5. Any settlement conferences scheduled pursuant to Section 34A-5-107(3) are not adjudicative hearings.

G. PRESIDING OFFICER

For those procedures specified in Section 34A-5-107(1) through (5), the presiding officer shall be the Director or the Director's designee. The presiding officer for the formal hearing referred to in Section 34A-5-(6) through (11) shall be appointed by the Commission.

R606-1-4. Adjudication and Review Pursuant to Section 34A-5-107.

A. After a charge of discrimination has been investigated, the Director shall issue a Determination and Order. Alternatively, the Director may refer the charge to an investigator for further investigation.

B. A party dissatisfied with the Director's Determination and Order may request a de novo evidentiary hearing. The request must be in writing, state the party's reasons for seeking review, and must be received by the Division within 30 days of the date the Director signed the Determination and Order.

1. In computing the foregoing 30-day period, the day on which the Determination and Order are signed by the Director shall not be included. The last day of the 30-day period shall be included unless it is a weekend or legal holiday, in which event the 30-day period runs until the end of the next business day.

2. Unless a timely request for hearing is received by the Division, the Director's Determination and Order is the final Commission Order.

3. If a timely request for hearing is received, the Division will transmit the request to the Division of Adjudication within the Commission for assignment to an Administrative Law Judge. The ALJ will conduct a de novo formal hearing and issue an order in conformity with the requirements of the Utah Administrative Procedures Act.

C. A party may request review of the ALJ's order by complying with the provisions of Section 34A-1-303 and Section 63-46b-12 of the Utah Administrative Procedures Act.

R606-1-5. Designation as Formal Proceedings.

The adjudicative proceedings referred to in Subsections 34A-5-107(6)-(10) are classified as formal proceedings for purposes of the Utah Administrative Procedures Act.

R606-1-6. 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) 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 where the petitioner can be contacted during 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.

C. REVIEWABILITY

The agency shall not review a petition for a Declaratory Order that is:

1. not within the jurisdiction and competence of the agency;

2. trivial, irrelevant, or immaterial; or

3. otherwise excluded by state or federal law.

D. PETITION REVIEW AND DISPOSITION

1. The Director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with Legal Counsel; or

(c) take any action consistent with 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).

E. ADMINISTRATIVE REVIEW

Review of a Declaratory Order is per Section 63-46b-13 only.

R606-1-7. 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 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.

KEY: discrimination, employment, time
December 26, 1995 34A-5-101 et seq.
Notice of Continuation February 4, 1997 63-46b-1 et seq.

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-2. Pre-Employment Inquiry Guide.
R606-2-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-2-2. Guidelines.

Any inquiry is improper which, although not specifically listed below, is designed to elicit information as to Race, Color, Sex, Age, Religion, National Origin, or Disability. The prime consideration for any job is the ability to perform it.

A. NAME

1. Proper Pre-Employment Inquiries:

First, Middle, and Last Name and any other name used for prior employment.

2. Improper Pre-Employment Inquiries:

Inquiry into original name cannot be used for discriminatory purposes. Inquiries concerning specific questions about the name which would indicate applicant's lineage, ancestry, national origin, or descent; or to require prefix to applicant's name, (Mr., Mrs., Miss, Ms.); or to inquire into marital status unless based on legitimate bona fide occupational qualifications or prior employment history are considered improper.

B. ADDRESS

1. Proper Pre-employment Inquiries:

Applicant's place of residence.

2. Improper Pre-employment Inquiries:

Inquiry into foreign addresses which would indicate national origin.

C. BIRTHPLACE

1. Proper Pre-employment Inquiries:

Proof of citizenship may be requested prior to hiring in accordance with the Immigration Reform and Control Act of 1986 (IRCA).

2. Improper Pre-Employment Inquiries:

Inquiry into birthplace of applicant, or birthplace of applicant's parents, spouse, or relatives. Require prior to hiring, birth certificate, naturalization or baptismal record.

D. RACE OR COLOR

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

Any inquiry which would indicate race or color is prohibited.

E. AGE

1. Proper Pre-Employment Inquiries:

Are you under the age of 18? If there is a question as to applicant being of legal working age, proof may be requested in form of work permit.

2. Improper Pre-Employment Inquiries:

Requesting an individual's date of birth prior to employment is prohibited, unless relative to whether the individual is a minor.

F. DISABILITY

1. Proper Pre-Employment Inquiries:

a. an inquiry about ability to perform job-related functions as long as the questions are not phrased in terms of a disability.

b. asking a job applicant to describe or demonstrate, with or without reasonable accommodation, his ability to perform job-related functions.

2. Improper Pre-Employment Inquiries:

a. any inquiry whether an applicant is disabled or about the nature or severity of a disability.

b. any requirement for an applicant to take a medical examination prior to an offer of employment.

G. SEX

1. Proper Pre-Employment Inquiries:

Where a bona fide occupational qualification is reasonably necessary to the normal operation of that business or enterprise.

2. Improper Pre-Employment Inquiries:

Any other inquiry which would indicate sex or related conditions such as pregnancy or plans to have children. Inquiry into sex of applicant.

H. PHOTOGRAPHS

1. Proper Pre-Employment Inquiries:

Photograph may be requested only after hiring and then only for legitimate business purpose.

2. Improper Pre-Employment Inquiries:

Any request for photograph prior to hiring is prohibited.

I. RELIGION-CREED

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed prior to hiring is prohibited.

J. RELATIVES

1. Proper Pre-Employment Inquiries:

Inquiry into name and address and relationship of persons to be notified in case of emergency. For a minor it must be a parent or guardian.

2. Improper Pre-Employment Inquiries:

Names and addresses of any relatives other than those listed as proper.

K. ORGANIZATIONS

1. Proper Pre-Employment Inquiries:

Inquiry into organization memberships including professional, scientific and civic groups, but excluding any organization, the name or charter of which indicate the race, religion, color, sex, and national origin of its members.

2. Improper Pre-Employment Inquiries:

Requirement that applicant list all organizations, clubs, societies, and lodges to which he belongs.

Unlawful to inquire into organizations which may indicate race, religion, color, sex, and national origin of their members.

L. NOTICE IN CASE OF EMERGENCY

1. Proper Pre-Employment Inquiries:

Name and address and relationship of "Persons" to be notified in case of accident or emergency.

2. Improper Pre-Employment Inquiries:

Name and address of all others except those listed as proper.

M. REFERENCES

1. Proper Pre-Employment Inquiries:

Persons willing to give references.

2. Improper Pre-Employment Inquiries:

Request of name of applicant's bishop, pastor, or religious

leader.

N. MILITARY EXPERIENCE

1. Proper Pre-Employment Inquiries:

Inquiry into applicant's military experience or duties in United States Armed Forces.

2. Improper Pre-Employment Inquiries:

To require copy of military discharge paper or type of discharge, unless such inquiry is based upon a bona fide occupational qualification.

O. EXPERIENCE

1. Proper Pre-Employment Inquiries:

Inquiry into work experience.

2. Improper Pre-Employment Inquires:

Any inquiries into work history which are not work-related.

P. CHARACTER

1. Proper Pre-Employment Inquiries:

Permissible to ask applicant for character references.

2. Improper Pre-Employment Inquiries:

Questions about applicant's sexual preferences or economic status.

Q. NUMBER OF DEPENDENTS

1. Proper Pre-Employment Inquiries:

This information may be requested only after hiring for legitimate purposes.

2. Improper Pre-Employment Inquiries:

Asking an applicant's number of dependents prior to employment is prohibited.

R. COLOR OF HAIR OR EYES

1. Proper Pre-Employment Inquiries:

None. Asking questions regarding hair color and eye color are not job relevant.

S. HEIGHT AND WEIGHT

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

It is unlawful for an employer to set minimum height or weight requirements for hiring unless based on a bona fide occupational qualification.

T. EDUCATION

1. Proper Pre-Employment Inquiries:

Inquiry into what academic, professional, or vocational schools attended.

2. Improper Pre-Employment Inquiries:

It is unlawful to ask specifically the nationality, racial, or religious affiliation of a school attended by the applicant.

U. PRIOR ARREST RECORD

1. Proper Pre-Employment Inquiries:

None. It is not proper to ask about arrest records.

V. CRIMINAL RECORD

1. Proper Pre-Employment Inquiries:

Have you ever been convicted of a felony? It is proper to ask about a felony conviction.

2. Improper Pre-Employment Inquiries:

Inquiry advisable only if job related.

W. ECONOMIC STATUS

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

It is generally prohibited to inquire as to bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages as poor credit ratings have a disparate impact on women and minorities.

KEY: discrimination, employment, time
1994 34A-5-101 et seq.
Notice of Continuation February 4, 1997 63-46b-1 et seq.

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-3. Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies.
R606-3-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-3-2. Procedures and Prohibitions.

A. In order to comply with the provisions of the Utah Antidiscrimination Act relating to prohibited employment practices, a contractor must do the following:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or disability.

2. In all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, national origin, or disability.

3. The contractor will send to each labor union or workers' representative notices stating the contractor's responsibilities under the Act.

4. The contractor will furnish such information and reports as requested by the Division for the purpose of determining compliance with the Act.

5. The contractor will include the provisions of subsections 1-4 above in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor unless exempted by law.

B. Failure of the contractor to comply with the Act or the rules shall be deemed a breach of contract and the contract may be canceled, terminated, or suspended in whole or in part.

KEY: discrimination, contractors, construction contracts
1990 34A-5-104 et seq.
Notice of Continuation January 15, 1996

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-5. Employment Agencies.
R606-5-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-5-2. Procedures and Prohibitions.

A. An employment agency undertaking to fill a job order containing a specification regarding race, color, national origin, sex, age, religion, or disability will share responsibility with the employer placing the job order if it is determined that the specification was not based upon a bona fide occupational qualification.

B. An exception to R606-5-2.A can be allowed in that an application form may ask "Male ....., Female .....", or "Mr., Mrs., Miss" provided that the inquiry is made in good faith for a nondiscriminatory purpose and is based upon a bona fide occupational qualification.

KEY: discrimination, employment agencies, employment
1990 34A-5-104 et seq.
Notice of Continuation January 15, 1996

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-2 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 1999, edition are incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 1999 edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037

543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

DREMAN, Robert C.
South Ogden, Utah 84405
479-5199

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

PADLEY, Gary G.
SLC, Utah 84116
595-6001

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting

and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. Eye wash fountain or a ready source of running tap water, such as drinking fountain or hose with a gentle flow of water should be immediately available for eye irrigation. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational

safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be

subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a

request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent

place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries

and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F.

(including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the

Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a

multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong.

Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable

principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably

employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized

persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable

employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and

to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees

and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety

of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
July 2, 1999 **34A-6**

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. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103.

2. Submit the completed form to the lieutenant governor's office; and

3. Pay the $25 registration fee.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;

2. Approve or disapprove the registration/license application; and

3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-105(2)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-105(2)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

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 disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval 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, Sections 36-11-201 and 36-11-202:

a. Failure to register;

b. Failure to file a year end or supplemental report on or before the statutory due date;

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 36-11-103, 36-11-201 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 a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(2), suspension of up to three years 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 reports not filed on or before the statutory due date shall not be less than $50 per day for each day the report is late.

2. Extenuating circumstances may be considered before a penalty is imposed.

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; and
3. The governor.

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
March 3, 2000 **36-11-404**

R651. Natural Resources, Parks and Recreation.
R651-205. Zoned Waters.
R651-205-1. Obeying Zoned Waters.

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. No water skiing in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

KEY: boating
March 27, 2000 **73-18-4(3)**
Notice of Continuation May 12, 1997

R657. Natural Resources, Wildlife Resources.
R657-19. Taking Nongame Mammals.
R657-19-1. Purpose and Authority.

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person taking any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Noncontrolled species" means a species or subspecies of zoological animal that poses a minimal threat of disease or ecological, environmental, or human health or safety risk.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae ;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.

(1) A person may not purchase or sell any nongame mammal or it's parts.

(2) A certificate of registration must be obtained prior to taking any species designated in Subsection R657-19-4 as prohibited or any species listed in Rule R657-3-24 as prohibited or controlled.

(3) Section 23-20-8 does not apply to the taking of noncontrolled species covered under this rule.

R657-19-4. Controlled Species.

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - Ochotona princeps.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, Cynomys parvidens, in Beaver, Garfield, Iron, Kane, Piute, Sanpete, Sevier, Washington, and Wayne counties.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - Peromyscus eremicus;

(b) kangaroo rats - Dipodomys, all species;

(c) Southern grasshopper mouse - Onychomys torridus; and

(d) Virgin River montane vole - Microtus montanus rivularis, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - Sciurus aberti;

(b) Northern rock mouse - Peromyscus nasutus; and

(c) spotted ground squirrel - Spermophilus spilosoma.

R657-19-5. Noncontrolled Species.

All nongame mammal species not designated as controlled species in R657-19-4, are designated as noncontrolled species and may be taken as follows:

(1) A license is not required to take any species of nongame mammals designated as noncontrolled;

(2) Species of nongame mammals designated as noncontrolled may be taken year-round, 24-hours-a-day.

(3) There are no bag or possession limits for species of nongame mammals designated as noncontrolled.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, Cynomys parvidens, without first obtaining a certificate of registration.

(b) A person may apply for a certificate of registration at the division's southern regional office, 622 North Main Street, Cedar City, Utah 84720.

(c) After review of the application, a certificate of registration may be issued.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition the requirements of this rule, any person taking Utah prairie dogs must comply with local ordinances and laws.

R657-19-7. Areas Open to Taking Utah Prairie Dogs --Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person may take Utah prairie dogs only on private lands within the following counties:

(a) Beaver;

(b) Garfield;

(c) Iron;

(d) Kane;

(e) Piute;

(f) Sanpete;

(g) Sevier;

(h) Washington; and

(i) Wayne.

(2)(a) A person may take Utah prairie dogs on private agricultural areas only, where Utah prairie dogs are causing damage to agricultural lands as provided in the certificate of registration.

(b) Taking of a Utah prairie dog on any land other than as provided in the certificate of registration, including any public land, is a violation of state and federal law.

(3) A landowner, lessee, or employee on a regular payroll and not hired specifically to take Utah prairie dogs, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned

duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31.

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration.

(b) The total range-wide take is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take.

The following information must be reported to the division's southern regional office, 622 North Main Street, Cedar City, Utah 84720, every 30 days:

(1) the name and address of the certificate of registration holder;

(2) the person's certificate of registration number; and

(3) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

R657-19-9. Unlawful Possession.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

KEY: wildlife, game laws

September 9, 1996	**23-13-3**
Notice of Continuation March 30, 2000	**23-14-18**
	23-14-19
	23-14-20

R850. School and Institutional Trust Lands, Administration.
R850-11. Procurement.
R850-11-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(a)(iv).

R850-11-150. Purposes.

Section 53C-1-201(3)(a)(iv) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. This rule provides alternative procurement procedures that the agency may follow when procuring any goods and services related to the administration of the agency or the management, development, leasing or sale of trust lands. Nothing in this rule shall be deemed to prevent the agency from procuring goods and services pursuant to the Utah Procurement Code or other applicable law whenever deemed advisable by the agency, or in circumstances where this rule is not applicable.

R850-11-200. Definitions.

For the purposes of this rule:

1. Provider: means an individual or firm engaged in the business of providing goods or services deemed necessary by the agency.

2. Services: any professional services related to the administration of the agency or the management, development, leasing or sale of trust lands, including management consulting, legal, engineering, construction, environmental, geological, mining engineering, architectural, survey, appraisal, real estate brokerage, planning, or such other services as needed.

R850-11-300. Statements of Qualification by Providers.

1. The agency may from time to time request providers to submit a statement of qualifications containing information that the agency deems relevant to the provider's ability to provide quality goods or services. At least once annually, the agency will advertise statewide its intent to accept statements of qualifications, and will maintain a log of providers who have submitted statements of qualifications for particular goods or services.

2. The purpose of prequalification is to provide the agency with basic information regarding providers for the agency's convenience. The agency is not required to solicit each or any prequalified provider for a particular good or service when it undertakes a procurement.

R850-11-400. Bidding Procedures - Small Procurements.

1. Competitive bids are not required for procurements under $2,000 unless the responsible agency staff member believes that the potential financial benefit to the trust beneficiaries from obtaining bids outweighs the staff time and costs associated with soliciting bids.

2. For procurements over $2,000 and less than $20,000, the responsible agency staff member shall seek to obtain no less than two competitive bids. Bids may be solicited and received by telephone, but shall be noted in writing by the responsible agency staff member.

3. The provider offering the lowest bid shall be selected unless the director or responsible assistant director makes a written determination that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. Nothing in this rule shall prevent the agency from using existing statewide contracts for supplies, services and construction as set forth in R33-3-301(2).

R850-11-450. Bidding Procedures - Large Contracts.

1. For procurements of services anticipated to exceed $20,000, the agency shall prepare a written request for proposals (RFP) or invitation to bid describing information required by the agency in evaluating the proposal, which may include a description of the services required, a statement of the provider's experience and qualifications, any performance schedule or deadlines, billing rates, bid specifications, and other information relevant to the particular project.

2. The responsible agency staff member shall seek to obtain at least three written responses to the RFP. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers.

3. The provider offering the lowest bid shall be selected unless the director or the responsible assistant director makes a written determination, supported by detailed reasons, that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. For contracts involving the provision of services where the scope or duration of the services have not been determined at the time of procurement, the agency shall select the provider offering, as determined in the discretion of the director or the responsible assistant director, the best combination of price, expertise, and other relevant factors. The director or the responsible assistant director shall make a written determination, supported by detailed reasons, that the selected provider is best qualified to provide the particular services being procured by the agency.

5. For all procurements of construction anticipated to exceed $50,000, the agency shall consult with the Division of Purchasing in advance of public dissemination of the RFP or bid documents.

R850-11-500. Sole Source Procurements.

Where the agency has identified a provider that has special familiarity or qualifications with respect to a project, or that has previously worked on a related project, the agency may hire the provider without soliciting bids from other providers if the director or responsible assistant director finds in writing that hiring the particular provider is in the best interests of the trust beneficiaries, and that the provider's fee is reasonable.

R850-11-600. Real Estate Brokerage Services.

1. The agency is not required to solicit bids for real estate brokerage services, and may list trust lands with a licensed Utah broker as it sees fit.

2. Where the agency has not listed a property with a broker, but has undertaken internal marketing efforts, the agency is authorized but not obligated to pay a commission or finder's fee no greater than the prevailing market rates in the area to real

estate brokers who have previously registered their client as directed by the agency, and who are the procuring cause of:

(a) the sale of trust lands; or

(b) a development transaction entered into by the agency pursuant to R850-140.

3. Commission amounts will be determined in the discretion of the agency based on type of transaction, prevailing market conditions, and any other relevant factors.

R850-11-700. Debt and Equity Investments.

Debt and equity investments made by the agency shall be exempt from the Utah Procurement Code, provided that such investments are part of a development transaction approved by the board and entered into by the agency pursuant to R850-140.

R850-11-800. Documentation.

The agency will determine, based on the type of service requested and complexity of the project, the level of contractual documentation necessary in order to adequately protect the best interests of the trust. Formal contract documentation shall be subject to approval as to form by a representative of the attorney general's office.

R850-11-900. Bonding for Construction Services.

1. For construction services costing $50,000 or higher, the agency shall require the chosen provider to deliver to the agency a performance bond and a payment bond in amounts equal to 100% of the price specified in the contract and executed by a surety company authorized to do business in this state or in any other form satisfactory to the agency;

2. For construction services costing less than $50,000, the agency may require a performance bond and a payment bond as described in R850-11-700(1) if it determines that requiring such bonds is in the best interests of the trust.

R850-11-1000. Conflicts of Interest.

The agency shall not enter into any contract with a provider which violates or, on account of the factual circumstances or person involved, gives the appearance of a conflict of interest or a potential violation of the Utah Public Officer's and Employee's Ethics Act.

R850-11-1100. Appeals.

Appeals of agency procurement decisions shall be governed by Part H of Title 63, Chapter 56. All initial appeals shall be directed to the director of the agency, with a copy to the Director of the Division of Purchasing. The disposition of any appeal shall take into account the intended purpose of Section 53C-1-201(3)(a)(iv), which is to provide the agency with broad discretion and flexibility in procurement to facilitate businesslike management of trust lands.

KEY: government purchasing
March 17, 2000 **53C-1-201(3)(a)(iv)**

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) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(1) retail price of the canned computer software;

(2) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(3) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

d) 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	Percent Good

Acquisition	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%

23. Class 25 - Aircraft Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence.

a) Examples of property in this class include:

(1) aircraft jigs and dies;

(2) aircraft molds;

(3) aircraft patterns;

(4) aircraft taps and gauges;

(5) aircraft manufacturing test equipment;

(6) aircraft fixtures; and

(7) special aircraft manufacturing aids.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
99	84%
98	67%
97	51%
96	34%
95	18%
94 and prior	4%

F. The provisions 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. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage,

cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-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 which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation or construction and functions as an economic unit or "one thing."

6. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

7. "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, including local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, 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, including electric generation, transmission, and distribution companies, and other similar type entities and are assessable by the Commission pursuant to Section 59-2-201.

c. "Transportation properties" means all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

8. "Taxable 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.

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 taxable 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. The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the correlation process.

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. 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 changes to the application of a methodology, by proposing a different valuation methodology or weighting formula, or by presenting any other evidence or argument 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. Depending upon the industry, it may be appropriate to trend HCLD 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 property 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 with reasonable accuracy 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, including industry specific cost indicies. 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 rate (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 one type of economic obsolescence.

b. DFIT can be one type of 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 Properties:

1. Cost Indicator. The HCLD approach, which may, if appropriate, be trended as 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.

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.

a. Cost Indicator. The HCLD approach, appropriately trended as 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, 2000.

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
March 28, 2000
Notice of Continuation May 8, 1997

Art. XIII, Sec 2
9-2-201
11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13
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59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R920. Transportation, Operations, Traffic and Safety.
R920-50. Tramway Operations Safety Rules.
R920-50-1. Utah Tramway Rules for Passenger Tramways.

A. Introduction

These rules are issued pursuant to Utah Code Annotated, Section 63-11-46 to implement the Passenger Tramway Safety Act, Utah Code Ann., Sections 63-11-37 et seq.

B. Governing Standard

1. The governing standard in Utah is the standard entitled "ANSI B-77.1, 1992", published by the American National Standards Institute, 1430 Broadway, New York, New York 10018, and approved by ANSI on December 2, 1992 and Section 8 of "ANSI B-77.1, 1999", published by the American National Standards Institute, 1430 Broadway, New York, New York 10018, and approved by ANSI on March 11, 1999, and as modified by rule of the Committee. Adoption of this standard is authorized by Section 63-11-37.

2. The Utah Passenger Tramway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

C. Classification of Tramways and Applicable Standards

1. Section 1.2.4.1 of the Governing Standard is modified by the following requirements:

a. Existing installations need not comply with the new or revised requirements of the Governing Standard and these rules, except as set forth in R920-50-1.D.1.b;

b. Existing tramways, when removed and reinstalled, shall be classified as new installations (see R920-50-1-C.2);

c. Tramway modifications shall meet the requirements of R920-50-2.F and R920-50-8.

2. Section 1.2.4.2 of the Governing Standard is modified by the following requirement: New installations and those with design review completed by the Committee after the effective date of the Governing Standard, shall comply with the new or revised requirements of the Governing Standard and with these rules.

D. Inspections of Tramways

1. The annual general inspection requirements stated in ANSI B77.1, 2.3.4.1, 3.3.4.1, 4.3.4.1, 5.3.4.1 and 6.3.4.1, are replaced by the following requirements:

a. An annual general or pre-operational inspection of each passenger tramway shall be made by a Tramway Inspector prior to approval of any application for licensure. An operational inspection of each passenger tramway may be made by a Tramway Inspector at least once a year during the high-use season. For each passenger tramway inspected, items found either deficient or in noncompliance shall be noted. A report signed by the Tramway Inspector listing items found either deficient or in noncompliance shall be filed with the owner. The owner shall correct all deficiencies and noncompliance items listed in the Tramway Inspector's report or request an exception from the Governing Standard and applicable Utah Tramway Operations Safety Rules. In addition to the annual general, pre-operational, and operational inspections, the Committee may order other inspections in accordance with Section 63-11-47;

b. All installations shall comply with the new or revised requirements of the Governing Standard and these rules in the following areas, on or before the effective date of each paragraph, as set forth below:

1. Requirements for auxiliary drives, as set forth in ANSI B77.1, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1. These requirements shall be effective November 1, 1994;

2. Requirements for electronic speed-regulated drives, as set forth in ANSI B77.1, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2. These requirements shall be effective November 1, 1994;

3. Requirement for rope position monitoring, as set forth in ANSI B77.1, 3.1.3.3.2, paragraph 6. This requirement shall be effective November 1, 1994;

4. Requirement for fire detection system as set forth in R920-50-1.E. This requirement shall be effective November 1, 1995;

5. Requirements for friction type brakes as set forth in ANSI B77.1, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5. These requirements shall be effective November 1, 1995.

c. Grips, clips, hangars, chairs, carriages and cabins shall be tested according to ANSI B77.1, X.3.4.3, except as modified in this subsection c.

1. Testing personnel shall be qualified in accordance with ASNT Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

2. Testing agency inspector shall certify to the owner or area operator that the passenger tramway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

3. Sampling size and method of obtaining the sample shall comply with X.3.4.3 of the Governing Standard;

4. Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

5. Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

6. Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

d. Wire rope inspection shall be performed according to Section 7.4.1 of the Governing Standard and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

e. All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, and 7.4.

E. Fire Detection

All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire

Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

F. Conveyors Standards

1. Section 8 of the ANSI B77.1-1999 is modified by the following requirement:

a. Modifying the maximum conveyor speed requirements stated in 8.1.1.5, that maximum speed is 160 feet/minute.

b. Loading and unloading areas requirements of 8.1.1.9 shall also accommodate the use of adaptive devices.

c. "Qualified personnel" as used in 8.1.1.11 means a qualified engineer approved by the Committee. A "conveyor specialist" as used in 8.3.4 means a tramway inspector approved by the Committee.

d. Power units referred to in 8.1.2.1 may not have reverse capability.

e. "Power supply cords" referred to in 8.2.1.5.5 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

f. The belt transition entry stop device referred to in 8.1.2.11.2 shall include redundant (double) sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. When an automatic stop occurs, an audible alarm shall sound for a minimum of 10 seconds or until manually reset. The alarm shall be audible to the operator at the loading and unloading areas.

g. A single operator, as referred to in 8.3.2.2 may not operate more than one conveyor.

h. No bypass of circuits, as referred to in 8.3.2.5.9 is allowed.

R920-50-2. Definition of Terms.

A. "Annual general inspection" means an inspection to verify preservation of original design integrity and to determine that components and systems of the passenger tramway are in proper working order and in accordance with Committee rules.

B. "Committee" means the Passenger Tramway Safety Committee as outlined in Section 63-11-39.

C. "Detachable grip lift" means a tramway system on which carriers circulate around the system alternately attaching to and detaching from a moving haul rope(s). The system may be monocable or bicable.

D. "Incident inspection" means an inspection of a passenger tramway incident made by an approved Tramway Inspector at the request of the Committee.

E. "Modification" means any change as defined in the Governing Standard, ANSI B77.1 Standard 1.2.4.3 and the replacement of a tramway component by one that alters the certified design or construction provided by the passenger tramway manufacturer or designer.

F. "Operational inspection" means an inspection of a passenger tramway made by a Tramway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with Committee rules.

G. "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a tramway and when specifically on duty for such purpose on that tramway.

H. "Passenger" means any person riding a tramway, other than "operating personnel".

I. "Passenger tramway" is defined in Section 63-11-38.

J. "Passenger Tramway Incident" means:

1. Any structural, mechanical, or electrical malfunction or failure of a passenger tramway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger tramway;

2. Any deropement regardless of whether or not the passenger tramway is evacuated;

3. Any evacuation of the passenger tramway other than by prime mover or auxiliary power unit, regardless of cause;

4. Any fire involving a passenger tramway component or adjacent structure;

5. Any structural, mechanical, or electrical malfunction or failure of a passenger tramway component that results in a loss of control of the passenger tramway as defined in the Governing Standard, ANSI B77.1 Standard X.2.1.7.2;

6. Any wire rope damage which exceeds the requirement in the Governing Standard, ANSI B77.1 Standard 7.4.1.1; or

7. Any structural, mechanical, or electrical malfunction or failure of a passenger tramway component that has the apparent potential for causing bodily injury to any person, including but not limited to, the following;

a. Terminal Structure

b. Bullwheel

c. Brake System

d. Tower Structure

e. Sheave, Axle, or Sheave Assembly

f. Carrier

g. Grip.

K. "Pre-operational inspection" means an inspection made by a Tramway Inspector prior to the operation of any new or modified passenger tramway requiring an Acceptance Inspection and Test.

L. "Qualified engineer" means, notwithstanding any different definition in the ANSI B77.1 Standard, any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

M. "Responsible charge" means effective control and direction of projects of the type discussed in these rules.

N. "Tramway inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the tramway owner, and approved by the Committee to inspect passenger tramways.

R920-50-3. Registration of Tramways.

A. General

1. Purpose - In order to ensure that all passenger tramways conform with the requirements set forth by the Passenger Tramway Act and these rules, all passenger tramways operating in the state of Utah shall be registered annually with the committee, and no passenger tramway shall be operated for passengers without a valid certificate of registration;

2. Term - Passenger tramways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue;

3. New tramways - Any passenger tramway which shall be

opened for the first time for passenger operation shall, during its first calendar year of operation, be construed to be a new tramway for purposes stated in these rules;

4. Existing tramways - Any passenger tramway which shall have been operated for passengers in excess of one calendar year, shall be construed to be an existing tramway for purposes stated in these rules;

5. Relocated tramways - Any passenger tramway moved to a new location shall be construed to be a new tramway for purposes stipulated in these rules, with the exception that tows expressly designed to be portable, shall not be considered new tramways when moved to different locations but remaining under the jurisdiction of the same operator;

6. Identification number - For each tramway, upon receipt of the first application for a certificate of registration, the committee shall assign an identification number to the tramway, which shall remain as a permanent identification number for the life of the tramway; all correspondence with the committee pertaining to any tramway shall refer to the identification number assigned to that tramway;

7. All tramway operators shall be covered by a liability insurance of a minimum of $300,000;

8. Submittal of application for registration of tramways - All applications for registration of new or existing tramways shall be submitted in accordance with requirements of these rules and shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Tramway Safety Committee
Division of Safety
4501 South 2700 West
Salt Lake City, Utah 84119-5998;

9. "As Built" drawings for each passenger tramway shall be submitted no later than 60 days after the project is completed and the Acceptance Test and Inspection is finished.

B. Attachments

In addition to supporting documents indicated in R920-50-4 or R920-50-7, each application is to include as attachments:

1. Certificate of insurance
2. Annual registration fee.

R920-50-4. Registration of New Tramways.

A. Application for Certification of Registration

Prior to the operation of any new passenger tramway, the operator shall apply to the Committee for a Certificate of Registration in such form as the Committee shall designate.

B. The Application must include the name, address and telephone number of operator of the tramway, and operator's designation of the tramway. The application and certifications must be in accordance with R920-50-3.A and submitted as follows:

1. A Pre-Operational Inspection Report must be submitted by an approved Tramway Inspector, and must include the name and address of the Inspector and date of his or her inspection.

2. Any Request for Exception from Standards for Passenger Tramway shall be submitted in accordance with R920-50-10. Any known items that require a Request for Exception from Standards for Passenger Tramways must be submitted to the Committee before work begins.

3. A Certification of Tramway Design for New or Modified Passenger Tramways, must be submitted. The Qualified Engineer in responsible charge of the design shall certify to the Committee on the top drawing of the design drawing packet that the design, plans and specifications conform to the Utah Passenger Tramway Safety Act,the Governing Standard and the Utah Tramway Operations Safety Rules. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test and must state the following:

"I hereby certify that the design for this tramway or tramway modification is in complete compliance with the Utah Passenger Tramway Safety Act, Governing Standard and the Utah Tramway Operations Safety Rules and that I accept responsibility for the engineering designs, calculations, drawings and specifications for this tramway or tramway modification." This statement shall be placed on the top drawing of the drawing packet and signed and sealed by the Qualified Engineer. Each additional sheet of this drawing packet shall be sealed by the Qualified Engineer. Any variation from the design drawings shall be noted in the drawings and approved by the Qualified Design Engineer.

4. A Certification of Compliance for Passenger Tramways shall be made on the Application for Certificate of Registration for New or Modified Tramways. This Certification shall include the following statement, signed and dated by the tramway owner or area operator: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Tramway."

5. The Annual Registration Fee must be submitted in accordance with R920-50-11-A.

6. A Certification of Fabrication and Materials for Passenger Tramways must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this tramway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification must include the following information:

a. Name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway.

b. Name and address of manufacturing concern, and name, seal and Utah license number of the qualified engineer making certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that all components, all fabrication procedures and all material used in the production of the equipment for this tramway, or tramway modification, conform with the Utah Passenger Tramway Safety Act, Governing Standard, the Utah Tramway Operations Safety Rules and the drawings and specifications issued for this tramway or tramway modification by the Qualified Design Engineer."

7. A Certification of Construction for Passenger Tramways must be submitted by a Qualified Engineer directly responsible for the construction for the tramway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification shall include the following

information:

a. Name, address and telephone number of operator of the tramway name of tramway supervisor, operator's designation of the tramway identification number, as assigned by the committee for the tramway;

b. Name, Utah license number and seal of the Qualified Engineer making the certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that all footings and other concrete structures, field assembly, excavations, placement of reinforcing steel and anchoring components, quality of concrete and placement of concrete were carried out in accordance with plans and specifications, so that the design bearing value will be attained, as specified by the drawings and specifications issued for this tramway or tramway modification by the Qualified Design Engineer."

8. A final Acceptance Test report must be submitted to the Committee. A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. Acceptance inspection and tests will be scheduled by the Committee or Committee's representative as the acceptance test procedures are received. The owner or area operator shall notify the Committee in writing before the scheduled date that the passenger tramway has been operated in accordance with the Governing Standard, section X.1.1.11.2.

9. A Certification of "As-Built" Profile for Passenger Tramways must be submitted by a Land Surveyor or Civil Engineer licensed in the state of Utah. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test, and shall be signed by the Civil Engineer or Land Surveyor, and shall read as follows: "I hereby certify that the attached "as-built" profile of the herein-identified tramway is as represented on the attached profile drawing and that the completed tramway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

10. A Utah Passenger Tramway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Inspection and Test.

R920-50-5. Annual Registration Fee.

This fee shall be submitted in accordance with stipulations of R920-50-11(A).

R920-50-6. Certificate of Registration.

If the application for certificate of registration and supporting documentation attest that the tramway complies with the Governing Standard and these rules, the Committee, if satisfied with the facts stated in the application, shall issue a certificate of registration to the operator.

R920-50-7. Registration of Existing Tramways.

A. Before November 1st, of each year, every operator of an Existing Passenger Tramway who intends to operate the tramway during the ensuing 12-month period shall apply to the Committee, in such form as the Committee shall designate, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

B. The Application shall include the following;

1. An Annual General Inspection Report by an approved Tramway Inspector, including the name and address of the Inspector and date of inspection.

2. Approved Request for Exception from Standards for Passenger Tramways which meets the requirements of R920-50-10, if applicable.

3. A Certification of Compliance for Passenger Tramways shall be made on the Application for Certificate of Registration for Existing Tramways. This Certification shall include the following statement, dated and signed by the tramway owner or area operator:"I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Tramway."

4. The Annual Registration Fee in accordance with R920-50-11.A.

R920-50-8. Modifications.

If a modification, as defined in R920-50-2(E) has been made to an existing tramway, the data as required by R920-50-7 shall also be accompanied by a design certification, fabrication and materials certification, and a construction certification, and also a survey profile certification if applicable, submitted by a qualified engineer to cover the modification. Depending on the nature and extent of the modification, the Committee, or the Committee's appointed representative, may require an Acceptance Inspection and Test.

R920-50-9. Certificate of Registration.

If the application for certificate of registration and documentation required by R920-50-7 and R920-50-8, if applicable, attest that the existing tramway complies with the governing standard and these rules, the committee, if satisfied with facts stated in the application, shall issue a certificate of registration to the owner.

R920-50-10. Exception.

A. In the event that the tramway does not conform with the requirements set forth in R920-50-1-C, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted. The first type is an Annual Exception. It continues indefinitely, but this type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the committee that a change is necessary. The second type of exception is a Limited Exception. This type of exception is granted only for a fixed time period to be determined by the Committee. The nature of the exception shall be stated in the Request for Exception from Standards. The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the owner or area operator in writing of its action on the Request.

B. The Request for Exception from Standards shall include

the following information:

1. Reasons for requesting an exception from requirements set forth in R920-50-1-C.

2. Specification of the ways in which the tramway does not conform to requirements set forth in R920-50-1-C.

3. Procedures, with estimated time and cost, which would be required to bring the tramway into conformance with the requirements set forth in R920-50-1-C.

C. Except as required in R920-50-10-F, the Committee shall issue a certification of registration with an exception if the operator satisfies the requirements stated in R920-50-10-B and also supplies the following for new or existing tramways:

New tramways - A design certification by a qualified engineer attesting that the tramway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C;

Existing tramways - A design certification by a qualified engineer attesting that the tramway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C and a statement of the operator certifying that the tramway has been operated safely and without any passenger tramway incident, as defined in R920-50-2-J-1 or -7, related to the feature for which the exception is requested, for any period of time the tramway has been operated up to 2 years prior to the date of the Request for Exception from Standards.

D. In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in R920-50-10-C if the Committee determines that the tramway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

E. The issuance of a certificate of registration with an annual exception shall not bind the committee to issue such a certificate for the tramway involved in subsequent years, nor to issue such a certificate for another tramway of same or similar design.

F. In special cases where doubt exists as to the safety of a tramway, the committee may require a special inspection to ascertain that the tramway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

R920-50-11. Fees.

A. In accordance with the requirements of Section 63-11-44 and these rules, each Application for a Certificate of Registration shall be accompanied by the applicable fee fixed by the Committee and approved by the Legislature:

1. Two-car or Multicar Aerial Passenger Tramway (101 HP or over) - $440.00 each

2. Two-car or Multicar Aerial Passenger Tramway (100 HP or under) - $220.00 each

3. Chair lift (Double) - $140.00 each

4. Chair lift (Triple) - $165.00 each

5. Chair lift (Quad) - $195.00 each

6. Chair lift (Detachable) - $440.00 each

7. Rope Tow, J-bar, T-bar, or platter pull - $55.00 each

R920-50-12. Violations.

The terms in this rule are outlined in Sections 63-11-48 and 63-11-49.

R920-50-13. Operation of Tramways.

A. Operation and maintenance

Operators shall comply with the Governing Standard.

B. Reporting of Incidents

1. Every passenger tramway incident, as defined in R920-50-2J shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

2. Every passenger tramway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the tramway was open to the public at the time of the incident.

3. The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Utah Code Annotated, Section 63-2-304 and are also governed by the provisions of Utah Code Annotated, Section 63-2-207.

4. When a passenger tramway incident, as defined in R920-50-2J(1) or (7), occurs, the owner or area operator of the tramway shall suspend operation of the tramway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the tramway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the tramway. The inspection shall precede any authorization to resume public operation of the passenger tramway.

C. Revocation of certificate of registration - Section 63-11-49.

R920-50-14. Tramway Inspector and Qualified Engineer.

A. General

1. In order to promulgate the uniformity and reliability of the inspections required by law and these rules, and of tramway designs, any person performing inspection services must be a "tramway inspector" as required by these rules, and any person performing design services must be a "qualified engineer", as required by these rules.

2. The committee shall maintain up-to-date lists of qualified engineers and tramway inspectors, which lists shall be open to inspection by the public.

3. Any person desiring to be approved by the committee as a tramway inspector or qualified engineer shall submit a written request to the committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-14(B).

B. Requirements

1. Applicant shall satisfy the tramway committee that by his or her education, training and experience gained by participation in tramway inspections or designs as a principal or an assistant to a recognized tramway inspector or tramway

designer, he or she is qualified to be, respectively, an approved inspector or tramway designer or both.

2. Applicant shall satisfy the committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger tramways, and that he or she has an understanding and working knowledge of the governing standard and these rules.

3. The committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified tramway inspector or qualified tramway designer.

4. The committee may approve employees of the state or individuals retained by the state as qualified tramway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the committee to use the services and talents of qualified private engineers wherever possible.

C. Revocation or suspension of approval as tramway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or tramway inspector who is found by the committee to have:

1. Practiced any fraud, misrepresentation, or deceit in applying for approval; or,

2. Caused damage to another by gross negligence in the practice of passenger tramway designing, construction, or inspection; or

3. Been engaged in acts of unlawful or unprofessional conduct.

R920-50-15. Inspection Requirements.

1. The tramway inspector shall verify that the intent of the design and operational requirements imposed by the Governing Standard and these rules are met.

2. Tramway inspectors may inspect tramways at any time during the operation of the tramway (spot check). All reports, logs, etc. shall be made available to them upon request.

R920-50-16. Administrative Procedures.

A. Informal proceedings

1. All adjudicative proceedings described in the Passenger Tramway Act and these rules R920-50-1 through R920-50-17, shall be characterized as informal adjudicative proceedings. This includes the following:

a. applications for certification and/or registration of new or existing tramways;

b. modifications under R920-50-8;

c. exceptions under R920-50-10;

d. revocations under R920-50-13;

e. any other adjudicative proceedings that are within the scope of the Utah Administrative Procedures Act.

2. All adjudicative proceedings shall be commenced initially before the secretary to the committee except for variances and revocations which shall commence initially before the committee.

3. Adjudicative proceedings declared by these rules hereinabove to commence "informally" shall be processed according to R920-50-17. All other requirements of R920-50-1 through R920-50-16, shall apply when they supplement these rules governing the informal adjudicative process and when not in conflict with R920-50-17. In case of conflict between these and any other provision of the tramway rules, these administrative procedure rules shall control and govern the informal adjudicative process.

B. Definitions

1. The terms used in this rule are defined in Section 63-46b-2.

2. In addition, "committee" means the passenger tramway safety committee and is the presiding officer for all appeals of adjudicative proceedings which commended before the secretary to the committee as well as all adjudicative proceedings which commence before the committee.

3. "Secretary to the committee" means the duly appointed secretary to the committee and is the presiding officer for all informal adjudicative proceedings which commence before the secretary to the committee in accordance with R920-50-17.

C. Commencement of adjudicative proceedings

1. The terms used in this rule are defined in Section 63-46b-2.

2. In addition, the person requesting the action shall use the forms of the Committee. The secretary to the committee is hereby authorized to codify said forms in conformance with this section. Said forms shall be deemed a request for agency action. The person requesting agency action shall file the request with the secretary to the committee and shall, unless waived, send a copy by mail to each affected passenger tramway operator.

3. A statement that the parties' may request an informal hearing before the secretary to the committee, except for variances and revocations which shall be before the committee, within 10 days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

4. Give the name, title, mailing address, and telephone number of the Secretary to the Committee; and

5. If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Chairman of the Committee or Secretary to the Committee, whichever is the Presiding Officer of the proceeding, may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

D. Conversion of informal to formal phase

1. Any time before a final order is issued in any adjudicative proceeding, the Presiding Officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

a. Conversion of the proceeding is in the public interest; and

b. Conversion of the proceeding does not unfairly prejudice the rights of any party.

E. Procedures for informal phase

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of these Rules shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Tramway Rules.

4. All notices required herein shall indicate the date of publication or mailing. These notices shall specify that any affected person may file with the Secretary to the Committee within ten days of said date, a written objection and request for informal hearing before the Secretary to the Committee. Failure to make such a request within the time specified may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten day period shall be waived if the Secretary to the Committee receives a waiver signed by those entitled to notice under these rules. An exception to the above would be requests for variances or for modifications which shall be heard before the Committee.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency Action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, and no subpoenas or other discovery orders will be issued.

8. All parties shall have access to information contained in the Committee's files and to all materials and information gathered in any investigation, to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Presiding Officer shall issue a written, signed order that states the following:

a. The decision;

b. The reasons for the decision;

c. A notice of any right to appeal to the Committee if the matter was before the Secretary to the Committee; and

d. The time limits for filing any appeal.

12. The order shall be based on the facts appearing in the Committee's files and on the facts presented in evidence at any hearings.

13. Unless waived, a copy of the order shall be promptly mailed to each of the parties.

14. All hearings shall be recorded at the Committee's expense. Any party, at his or her own expense, may have a reporter approved by the Secretary to the Committee prepare a transcript from the Committee's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right to power given to the Committee by another statute.

16. Default. The Presiding Officer may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Presiding Officer set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Presiding Officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Secretary to the Committee or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Committee within ten days of the issuance of the order. Such a written request for appeal shall be deemed to commence a contested informal adjudicative proceeding and hearing before the Committee. The appeal shall be conducted in accordance with the informal procedures described hereinabove, as well as the procedures of Utah Administrative Procedure Act Section 63-46b-12, where applicable. The written appeal shall:

a. Be signed by the party seeking the appeal;

b. State the grounds for the appeal and the relief requested;

c. State the date upon which it was mailed; and

d. Be sent by mail to the Presiding Officer and to each party.

18. Response on Appeal. Within 15 days of the mailing of the appeal, any party may file a response with the Secretary to the Committee. One copy of the response shall be sent by mail to each of the parties and to the Committee.

19. Notices of the informal hearing before the Committee shall be mailed to all parties and all parties may mail briefs, written statements and/or present testimony. The appeal is considered de novo and a record may be developed before the Committee.

20. Emergency Orders. Notwithstanding the other provisions of these Rules, the Chairman of the Committee or Secretary to the Committee is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Committee, or such shorter period of time as shall be prescribed by statute.

a. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(1) The facts known to the Chairman or Secretary or presented to the Chairman or Secretary show that an immediate and significant danger to the public health, safety, or welfare exists; and

(2) The threat requires immediate action by the Chairman or Secretary.

b. Limitations. In issuing its Emergency Order, the Chairman or Secretary shall:

(1) Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(2) Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Chairman or Secretary's utilization of emergency adjudicative proceedings;

(3) Give immediate notice to the persons who are required to comply with the order; and

(4) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Committee shall commence a

formal adjudicative proceeding before the Committee in accordance with the Utah Administrative Procedures Act.

F. Declaratory rulings

1. Petition for Declaratory Rulings. Any person may petition the Committee for a declaratory ruling on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved. All other classes of circumstances shall not be subject to declaratory ruling.

2. Not subject to Declaratory Rulings. The Committee shall not issue a declaratory ruling if:

a. The request is not one of the classes of circumstances listed hereinabove;

b. The person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

c. There would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

3. Intervention. Persons may intervene in declaratory proceedings if they meet the applicable requirements of the Utah Administrative Procedures Act and file such request with the Secretary of the Committee at least five (5) days prior to the Committee meeting at which the petition will be considered.

4. Forms of Rulings. After receipt of a petition for a declaratory order, the Committee may issue a written order:

a. Declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

b. Decline to issue a declaratory order and stating the reasons for its action.

5. Contents of Order. A declaratory order shall contain:

a. The names of all parties to the proceeding on which it is based;

b. The particular facts on which it is based; and

c. The reasons for its conclusion.

6. Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

7. Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

8. Time Limit. Unless the petitioner and the Committee agree in writing to an extension, if the Committee has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

G. Exhaustion of administrative remedies

1. Persons must exhaust their administrative remedies in accordance with Section 63-46b-14 prior to seeking judicial review.

2. In any informal communication with the Secretary to the Committee, there is an opportunity given to request an informal hearing before the Secretary to the Committee. If a timely request is made, the Secretary to the Committee will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Secretary's decision to the Committee within ten (10) days of issuance of the Secretary's order. Such rights to request an informal hearing before the Secretary to the Committee or to appeal the Secretary's order and have the matter be contested and heard before the Committee are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

H. Deadline for judicial review. A party shall file a petition for judicial review of final agency action within thirty (30) days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, Chapter 46b of the Utah Code Annotated (1953, as amended).

I. Judicial review of informal adjudicative proceedings. Judicial review of informal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-15 and 63-46b-17 through 63-46b-18.

J. Civil enforcement

1. Agency Action. In addition to other remedies provided by law and other rules of this Committee, the Committee or Secretary to the Committee may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

a. The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

b. Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

c. The action may request, and the court may grant, any of the following:

(1) declaratory relief;

(2) temporary or permanent injunctive relief;

(3) any other civil remedy provided by law; or

(4) any combination of the foregoing.

2. Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

a. Until at least thirty (30) days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Committee, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

b. If the Committee or Secretary to the Committee has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

c. If a petition for judicial review of the same order has been filed and is pending in court.

KEY: transportation safety, tramways*, passenger tramway*, tramway permits*

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